

***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
P/S

74-1713

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 74-1713

In the Matter of
A Motion to Compel Arbitration

between

INTEROCEAN SHIPPING COMPANY,

Petitioner-Appellee,

—and—

NATIONAL SHIPPING AND TRADING CORPORATION and
HELLENIC INTERNATIONAL SHIPPING, S.A.,

Respondents-Appellants.

JOINT APPENDIX

HILL, BETTS & NASH

Attorneys for Respondents-Appellants

Suite 5215

One World Trade Center

New York, New York 10048

Telephone: 466-4900

HAIGHT, GARDNER, POOR & HAVENS

Attorneys for Petitioner-Appellee

1 State Street Plaza

New York, New York 10004

Telephone: 344-6800



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JOINT APPENDIX

Docket Entries

<i>Date</i>	<i>Proceedings</i>
7-28-71	Filed petition to compel arbitration
7-28-71	Filed Notice of Assignment.
7-29-71	Filed petitioners Notice of Petition to Compel Arbitration.
11- 5-71	Filed Affidavit in opposition to petition to compel arbitration.
11- 5-71	Filed Respondent's Memorandum of Law in opposition to petition to compel arbit.
11-10-71	Filed Notice of Motion re: Compel Arbit. Ret. 11-23-71. (by petitioner).
12-30-71	Filed Memorandum and Order. Petition to compel arbitration is granted. Settle Order on Notice. Bonsal, J. (mailed notice).
1-11-72	Filed Consent Order. Motion is granted to the extent that the respondents are directed to proceed with arbitration at New York, NY in accordance with the Mobiltime charter arbitration clause on the petitioner's claim; ordered that respondents shall appoint an arbitrator within 20 days; ordered that upon the consent of the parties all proceedings and any arbitration in connection therewith shall be Stayed pending the determination of an appeal by respondents, etc. Bonsal, J. (mailed notice).
2- 9-72	Filed stipulation that the attached copy of petitioner's Memo. of Law in support of its motion

Docket Entries

<i>Date</i>	<i>Proceedings</i>
	to compel arbitration originally filed in the Office of the Clerk of this Court on 7-29-71, and the attached copy of Respondent's Memo of Law in opposition to motion to compel arbitration originally filed in the Office of the Clerk of this Court on 11-5-71, be filed in lieu of the originals thereof which are now missing from the files of this Court.
2- 9-72	Filed Notice of Appeal by respondents National Shipping and Trading Corp. and Hellenic International Shipping S.A. (mailed notice)
2- 9-72	Filed Certified Record on Appeal to the U.S.C.A.
2-10-72	Filed Affidavit of James M. Estabrook.
2-10-72	Filed Certified Supplemental Record on Appeal to the U.S.C.A.
2-15-72	Filed Undertaking for Costs on Appeal (\$250. National Surety Corp.)
7-24-72	Filed Mandate of the U.S.C.A. with opinion attached. Ordered that the order of the District Court is reversed and the action remanded for further proceedings not inconsistent with the opinion of this (USCA) Court with costs to be taxed against the appellee. Fusaro, Clerk USCA. Docketed as Judgment #72,728. Costs taxed in the sum of \$1353.57 in favor of appellants. (mailed notice).
1-22-73	Filed Order that the petitioner having moved to compel arbitration & the respondents filing a notice of appeal to the U.S.C.A. 2nd Circuit & having ruled that the order of the U.S.D.C.

*Docket Entries**Date**Proceedings*

S.D.N.Y. is reversed & the action remanded for further proceedings not inconsistent with the opinion of this court & after a hearing mandate having been filed it is Ordered that a summary trial of this matter be held on April 25, 1973 at 10:00 A.M. to determine the issued of whether or not an agreement was duly entered into between the parties for the chartering of S/S Oswego Reliance in according with the opinion of the U.S.C.A. Costs as taxed by the Court of Appeals against plttf to be paid on or before 2-6-73. So Ordered 1-22-73 Ryan, J. (mailed notice)

- 2- 6-73 Filed Stip & Order that all costs taxed pursuant to Order of Judge Ryan dated 1-22-73 in connection with the appeal taken by the respondent to the U.S.C.A. 2nd Circuit were paid by the petitioner on 2-6-73 & no further costs are due owing in respect of said appeal So ordered 2-6-73 Ryan, J.
- ? ? Filed Notice of Change of Address for Hill Betts & Nash.
- 4-27-73 Before Judge Ryan 4-25-73 Trial begun continues 4-26-73 & 4-27-73 adjourned sine die.
- 5- 2-73 Before Judge Ryan Trial Continued from 4-27-73 & continues & concluded Motion, if any, to correct transcript to be made by 5-11-73, if no motion is submitted, transcript is deemed to be correct. Findings & conclusions to be submitted by 5-31-73.

Docket Entries

<i>Date</i>	<i>Proceedings</i>
5-14-73	Filed Consent Order that the correction to the trial transcript as set forth in the annexed lists are agreed to be proper, & an order deeming the trial transcript so corrected may be entered. Ryan J.
5-30-73	Filed Stip & Order that the time for respondents to file their proposed Findings of Fact & Conclusions of Law & a brief is extended to 6-13-73, Ryan J.
6-12-73	Filed Stip & Order that the time for respondents to file proposed Findings & Conclusions of law etc. is extended to 6-18-73. Ryan J.
6-14-73	Filed Transcript of proceedings dated 4-25, 26, 27-73 & 5-2-73.
3-24-73	Pre-Trial Conference Held By Ryan
3- 4-74	Filed Opinion No. 40,418-Petition to compel arbitration is granted, and the parties are directed to forthwith settle an order designating arbitrators—Ryan, J.
4-15-74	Filed Order that the petition is granted as indicated; & respondents shall appoint an arbitrator within 20 days, etc. & costs be taxed against respondent. Ryan J. (mailed notice)
5-13-74	Filed Respondents Notice of Appeal fro order of 4-15-74. (mailed notice)

Petition to Compel Arbitration

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTEROCEAN SHIPPING COMPANY,

Petitioner,

—against—

NATIONAL SHIPPING AND TRADING CORPORATION and
HELLENIC INTERNATIONAL SHIPPING, S.A.,

Respondents.

*To the Honorable Judges of the United States District
Court for the Southern District of New York:*

The Petition of Interocean Shipping Company to proceed to arbitration in accordance with the terms of its written agreement respectfully shows to this Court and alleges upon information and belief:

First: Petitioner, Interocean Shipping Company, is a corporation organized and existing under and by virtue of the laws of the Republic of Liberia and is now and at all times relevant hereto, was the owner of the Liberian Flag Tank Vessel, s/s Oswego Reliance.

Second: That, upon information and belief, respondent, National Shipping & Trading Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal

place of business at 10 Columbus Circle, New York, New York.

Third: Upon information and belief, respondent National Shipping and Trading Corporation was and still is the parent company of co-respondent, Hellenic International Shipping S.A. and at all times relevant hereto acted as agent for said Hellenic International Shipping S.A.

Fourth: That upon information and belief, respondent, Hellenic International Shipping S.A., is a business entity organized and existing under and by virtue of the laws of the Republic of Panama and at all times relevant hereto was and still is a subsidiary of National Shipping and Trading Corporation, with an office and place of business at 10 Columbus Circle, New York, New York.

Fifth: That through Poten and Partners, Inc., charter brokers in New York, petitioner and respondents entered into an agreement on March 17, 1971, by which agreement respondents agreed to charter petitioner's vessel, the s/s Oswego Reliance, for a "period of one year plus or minus of 30 days" pursuant to the terms of a "Mobiltime" form charter party excluding clauses 9, 12AII, 12BII and 12BIII "suitable drydock clause to be worked out for November drydocking about 15 days with proper notices". Copies of the unsigned charter as prepared by the broker and telex of the broker confirming fixture are enclosed herewith as Exhibits "A" and "B" respectively.

Sixth: That the rate of charter hire was \$5.60 per dead weight ton per month, "payable U.S. dollars in New York".

Seventh: That the "Mobil tanker time charter party", a copy of which is annexed hereto as Exhibit "A" contains the following clause relating to arbitration:

"37. Any dispute arising under this charter shall be settled by arbitration in New York/London. The party requesting arbitration shall serve upon the other party a written demand for arbitration with the name and address of the arbitrator appointed by it, and such other party shall within twenty (20) days thereafter appoint an arbitrator and the two arbitrators so named, if they cannot agree, shall appoint a third, the decision or award of any two shall be final and binding upon the parties. Should the party upon whom the demand for arbitration is served fail or refuse to appoint an arbitrator within twenty (20) days, the single arbitrator shall have the right to decide alone, and his decision or award shall be final and binding upon the parties. The arbitrators shall have the discretion to impose the cost of arbitration upon the losing party or divide it between the parties on any terms which may appear just. Any decision or award rendered hereunder may be made and entered as a rule or judgment of any Court in any country, having jurisdiction."

Eighth: That thereafter, on March 18, 1971, petitioner proposed a drydocking clause and submitted same to respondents through charter broker Poten & Partners, Inc.

Ninth: That prior to respondents' repudiation of said charter as described in paragraph Seventh infra, respondents submitted no counter proposal with respect to drydocking.

Tenth: That thereafter on March 24, 1971, respondents without justification breached and repudiated the charter fixture. A copy of the telex of charter brokers, Poten &

Partners, Inc. setting forth said breach and repudiation of the charter, is annexed hereto as Exhibit "C". Annexed as Exhibit "D" is petitioner's (owner's) reply to Exhibit "B". Annexed as Exhibit "E" is respondents' (charterers') reply to Exhibit "D".

Eleventh: That as a result of the breach of said charter party by respondents, petitioner was required to find other employment for the s/s Oswego Reliance at a lesser charter hire, to its damage in the amount of approximately one million, four hundred thousand dollars (\$1,400,000).

Twelfth: That pursuant to the provisions of the arbitration clause quoted in paragraph 7, supra, by letter of May 20, 1971, a copy of which is annexed as Exhibit "F", petitioner appointed Lloyd C. Nelson, c/o Global Chartering & Brokerage Co., Inc., 29 Broadway, New York, New York as its arbitrator and demanded that respondents appoint an arbitrator in accordance with the terms of said charter party.

Thirteenth: That the respondents, despite said demand, have failed and refused arbitration and have failed and refused to appoint an arbitrator.

WHEREFORE, your petitioner moves this Court for an order directing that an arbitration proceed as provided for in the charter party dated March 17, 1971, and annexed hereto as Exhibit "A". The respondents having failed to appoint an arbitrator as provided for in the arbitration clause, petitioner respectfully requests this Honorable Court to enter an order directing respondents to appoint an arbitrator within twenty (20) days of said order and further providing that if respondents fail to appoint an arbitrator within twenty (20) days of said order that

9a


Lloyd C. Nelson heretofore appointed by petitioner, be designated and appointed as single arbitrator to determine the issues involved in the controversy and make a decision and/or award thereon and for such other and further relief as may be justified in the premises.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Petitioner
80 Broad Street
New York, New York 10004

/s/ JAMES M. ESTABROOK

10a

EXHIBIT "B" to PETITION

(Opposite) 

Mobil

MOBIL OIL CORPORATION
150 EAST 42ND STREET
NEW YORK, NEW YORK 10017



Copy Tanker time charter party

Mobilltime

Parties
Vessel and
Term

EXECUTED THIS 17th DAY OF March, 1971, between INTEROCEAN SHIPPING COMPANY
OF Monrovia, Liberia
(herein called "Owner") and
HELLENIC INTERNATIONAL SHIPPING S.A. OF Panama City

for the chartering by Owner to Charterer, for a term of One (1) (herein called "Charterer")
less at Charterer's option, of the Liberian year, 30 days more or
flag motor/steam tanker vessel name
"OSWEGO RELIANCE" (herein called "Vessel"), built in 1960, to be built to
delivery hereunder in 19, by KAWASOKI DOCKYARD CO., LTD.
of KOBE, JAPAN

This Charterer shall be subject to the following terms and conditions:

Description of
Vessel and
Warranties

(Maximum
Beaufort #5)

1. (a) Owner represents, undertakes and warrants that on the date of delivery of Vessel, as herein provided for, Vessel will be (i) of 20,081 tons net register, classed TALE TANK AMERICAN BUREAU OF SHIPPING, (ii) fitted with engines of 20,250 Shaft H.P., maximum continuous rating, as certified by Classification Society, and capable of maintaining in a calm sea a speed of 16.5 knots at 109.7 RPM at above stated horsepower average speed loaded and light in moderate weather with a fuel consumption of 100 tons (of 2240 lbs.) of bunker C fuel oil per day for main engine and 1 pumprooms and 3 cargo pumps capable of discharging in the aggregate a minimum of 3,900 tons (of 2240 lbs.) of water and stripping pumps capable of discharging in the aggregate a minimum of 800 tons (of 2240 lbs.) of water, respectively, per hour against a back pressure of 125 p.s.i. at Vessel's pumps, (iv) equipped with both wireless telegraph and V.H.F. radio telephone to comply with International Regulations to allow Vessel to communicate with land stations, (v) fitted throughout in all containing wing tanks and bunker compartments with heating coils of sufficient area to heat and maintain cargo temperature to 135° F. in sea water of 40° F. at all times, (vi) fitted with Butterworth or equally efficient tank cleaning equipment, satisfactory to Charterer, (vii) fitted with evaporator(s) capable of producing sufficient fresh water from sea water to meet Vessel's daily requirements, (viii) with discharge and (ix) being so constructed and equipped on delivery under this Charter, in accordance with Regulations now existing, as to enable her to transit the Panama Canal and Suez Canal with Crude Petroleum and/or its products in bulk in accordance with Navigation Regulations.

(b) Owner represents, undertakes and warrants that (i) Vessel can carry 49,283 tons (of 2240 lbs.) total deadweight of cargo, water, bunkers, and stores, on assigned summer mean draft of 39ft. 5/8 in. in salt water, corresponding to a load line summer freeboard of 11ft. 10in. under present International Load Line Regulations, (ii) that her load line is marked and so placed as to allow her being safely loaded to such draft, and (iii) that Vessel has a total capacity for bulk cargo, after deduction of 2% for expansion, of 1,968,842 cubic feet in center and wing tanks, in addition to permanent bunkers which have a capacity, after deduction of 2% for expansion, of 3765 tons (of 40 cubic feet) fuel oil.

(c) Owner undertakes to maintain Vessel, during the period of service under this Charter, so that all the representations and warranties set forth in paragraphs (a) and (b) of this Article 1 shall at all times be true and accurate. Owner further represents, undertakes and warrants that, on the date of delivery, Vessel will then be ready with holds and cargo tanks clear and clean and in every way fitted for the service and carriage of Crude oil and/or dirty petroleum products (Grade B products)

Charterer's option and being on delivery tight, staunch and strong, also having been drydocked and painted at Owner's expense, with pipelines, pumps and heating coils in good working condition, and with a full complement of Master, Officers and Crew for a Vessel of her size and character, and due diligence shall be exercised to so maintain Vessel, in such a state, during the term of this Charter.

(d) Should Vessel, during the term of this Charter, fail to comply with any declaration, undertaking or warranty that Owner has assumed pursuant to the terms and conditions of this Article 1, hire shall be reduced to the extent necessary to fully indemnify Charterer for any such failure, without prejudice or reference to any other claim for failure of guaranteed performance that Charterer may have against Owner under the terms of this Charter.

EXHIBIT "B" TO PETITION

11a-12a

Owner
Guarantees

Defined as
maximum
Beaufort
Scale 5

2. (a) In addition to warranties set forth herein, Owner stipulates, agrees and guarantees, that Vessel will, throughout the term of this Charter, maintain in ~~to weather~~ from sea buoy to sea buoy, a guaranteed average speed of no less than 16.5 knots (which average speed will be determined by taking the total mileage of the actual course which Vessel has travelled divided by the total hours at sea as shown in the log books, excluding stops at sea which are considered as periods of off-hire under the terms of this Charter).

(b) Owner further stipulates, agrees and guarantees that Vessel will, throughout the term of this Charter, maintain the above guaranteed average speed on a fuel consumption of no more than 100 tons (of 2240 lbs.) of bunker C fuel oil and ~~tons of 2240 lbs. of~~ per day for main engine and auxiliaries, respectively, excluding heating cargo and tank cleaning. Diesel oil may be used in the main engine for the purpose only of manoeuvring in close waters or within 10 miles, or during periods of low visibility, when the main engine is necessary for which purpose the consumption of diesel oil shall not exceed ~~tons of 2240 lbs. per day~~ for each 1000 tons of deadweight. Any excess consumption over ~~tons of 2240 lbs. per day~~ for each 1000 tons of deadweight shall be for Owner's account. For any diesel oil used in main engine other than during manoeuvring in close waters, the difference in price between diesel oil and fuel oil shall be paid by Charterer. The quantity of diesel oil used at current market prices.

(c) Owner further stipulates, agrees and guarantees that the cargo and stripping pumps will, throughout the term of this Charter, discharge Vessel's cargo within a maximum of 36 hours against a back pressure of 125 pounds per square inch the ship's pumps, and that Vessel is fitted with sufficient block valves for complete segregation to enable simultaneous loading and discharge from a centralized manifold amidships of three (3) grades of cargo, within vessels designed capabilities.

(d) The speed, fuel consumption and pumping performance which Owner, pursuant to this Article 2, has guaranteed, throughout the term of this Charter, will be reviewed by Charterer 6 calendar months after the date of delivery of Vessel to Charterer, and thereafter at the end of each subsequent period of 6 calendar months; provided, however, that if there should be a period of less than 6 calendar months remaining prior to redelivery, then not later than the commencement of the final month of this Charter. If, in respect of any such period, it is found that Vessel has failed to maintain the speed and/or fuel consumption and/or pumping performance guaranteed pursuant to this Article 2, Charterer shall be compensated in respect of each failing as follows: (i) SPEED - For each knot, or pro rata for each part of a knot, below the guaranteed average speed, a reduction in hire per calendar month of \$0.25 per each DWT of Vessel capacity reflected in Article 1(b), (ii) FUEL CONSUMPTION - Owner to pay Charterer for each ton (of 2240 lbs.), or pro rata for each part of a ton, consumed in excess of the guaranteed daily consumption for main engines and auxiliaries, at Mobil's average contract price for the particular grade of bunkers at Ras Tanura during the particular period under review, (iii) PUMPING - Vessel to be considered off-hire for each hour, or part of an hour, in excess of the maximum number of hours guaranteed herein for completing pumping of a full cargo against a back pressure of 125 pounds per square inch at vessel's pumps. Charterer shall determine whether any delay in pumping is the result of unique characteristics of the cargo being pumped or of the receiving terminal, and, if so, shall consider this factor in assessing the pumping performance. In the event that vessel shall, under the terms, conditions and standards of this Article, excel or better the guarantees set forth herein, except for the guarantee pertaining to pumping performance, (i) hire shall be increased by an amount equal to what would have been deducted in the event of a failure of guaranteed speed, and (ii) Owner shall recover from Charterer cost of fuel savings should vessel's consumption be below the guaranteed consumption, provided that the guaranteed speed is, at the same time, maintained.

Delivery,
Commencement of
Hire and Trade

3. (a) Hire shall commence when written notice from the Master has been given to Charterer or its Agents that Vessel is ready for delivery hereunder and is at Charterer's disposal at a Persian Gulf Port excluding Fao and Abadan, in or at such readily accessible dock, wharf or place where she can always safely lie afloat, as Charterer or its Agents may direct. However, hire shall not commence before March 31, 1971 unless with Charterer's consent. Charterer shall have the option to cancel this Charter should Vessel not be ready, in accordance with the provisions hereof, before April 15, 1971. Said option of cancellation shall be declared not later than the day of Vessel's readiness for delivery.

(b) Vessel may be employed in any part of the World, excluding USSR, People's Republic of China, other Communist controlled territories, and Cuba, unless Owner gives written consent, trading between safe ports in such lawful trades as Charterer or its Agents may direct, subject to Institute Warranties and Clauses as may be in effect throughout the period of this Charter; but including ports on the East Coast of Canada, St. Lawrence River, North American Lakes, Greenland and Baltic Sea, upon payment by Charterer of any additional insurance premiums required by Vessel's underwriters for such latter trading. Charter shall be entitled to send Vessel through the Strait of Magellan at any time of the year.

Hire, Adjustments
of Hire and
Redelivery

4. (a) Charterer shall pay for the use and hire of Vessel at the rate of U.S. Dollars 5.60 per ton per calendar month on Vessel's deadweight, as set forth in paragraph (b) of Article 1, payment to be made in advance monthly cash without discount to Interocean Shipping Company 25 Broadway New York, New York 10011 at New York, New York less any disbursements made by Charterer or advancements made by Charterer to the Master or Owner's Agents, or less any compensation due Charterers under paragraphs (d) of Article 1 and 2, and less any allowances due Charterer for off-hire. Hire shall commence from the hour (GMT) and date of delivery of Vessel, as herein provided, and shall continue until the hour (GMT) and date of redelivery to Owner at a Persian Gulf port excluding Fao and Abadan at Owner's option.

unless Vessel is lost or off-hire in accordance with the terms of this Charter. Any hire paid in advance and not earned shall be refundable and payable to Charterer by Owner and/or by any party to whom Owner may have assigned the hire; Owner at all times remaining ultimately responsible therefor. Should compliance with future legislation or regulations of classification societies, or other authorities, result in a loss of deadweight, the hire shall be correspondingly decreased to conform to the actual deadweight of Vessel. However, any increase in deadweight resulting from any such future legislation or regulations shall not result in a corresponding increase in hire. Owner and Charterer may agree upon a new rate of hire applicable to such increase in deadweight, and until an addendum to this charter party embodying such agreement is signed on behalf of Owner and Charterer the increase in deadweight shall not be used by Charterer.

(b) In default of payment of hire, as herein specified, Owner shall have the privilege of withdrawing Vessel from the service of Charterer, without prejudice to any claim Owner may otherwise have against Charterer under this Charter.

(c) Should the Vessel be on her final voyage towards the port of redelivery at the time a payment of hire becomes due, said payment shall be made for such length of time as Owner or its Agents and Charterer or its Agents may agree upon as the estimated time necessary to complete the voyage less (i) disbursements arranged by Charterer for Owner's account, (ii) estimated value of fuel in bunkers at the termination of the voyage and (iii) any other sums due Charterer; and when Vessel is redelivered to Owner any difference shall be refunded to or paid by Charterer as the case may be.

Off-hire

5. (a) In the event that a loss of time, in addition to any off-hire allowed pursuant to Article 2, not caused by Charterer's fault, shall (i) continue, due to repairs, breakdown, accident or damage to Vessel, collision, stranding, fire, interference by authorities or any other cause preventing the efficient working of the Vessel, for more than twenty-four (24) consecutive hours, whether at sea or in port, or for an accumulation of more than twenty-four (24) hours during any voyage (a voyage to be considered as a round voyage beginning at the time Vessel tenders for loading at the first port under the voyage in question until such time as it completes the voyage and tenders for loading on the subsequent voyage) or, (ii) continue, for any number of hours (including any part of an hour) due to deficiency of personnel or stores, strike, refusal to sail, breach of orders, or neglect of duty on the part of the Master, officers, or crew, or in order to render salvag services, obtain medical aid or treatment, or for landing any sick or injured person or the body of a deceased person (other than a passenger carried under Article 19 hereof), or due to any other deviation (including the putting back or into any port other than that to which Vessel is bound), then hire shall cease for all time so lost until Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when hire ceased hereunder.

(b) Cost of fuel and water consumed while Vessel is off-hire, pursuant to this Article 5, as well as all port charges, pilotage, towage and other expenses incurred during such period and/or consequent upon putting into any port or place other than to which Vessel is bound shall be borne by Owner; but should Vessel be delayed or driven into port or to anchorage by stress of weather or on account of accident to, or other consideration for, her cargo, such delay, deviation or loss of time shall be for Charterer's account.

(c) Any delay by ice or time spent in quarantine shall be for Charterer's account, except that delay in quarantine, resulting from the Master, Officers or Crew having communication with the shore at an infected port, where Charterer has given the Master adequate notice of the infection, shall be for Owner's account. Any loss of time through detention by authorities, unless due to Charterer's fault, shall be for Owner's account.

~~(d) In the event of a breakdown or delay from any cause whatsoever not otherwise covered by this Article, and Vessel remains off-hire, it is hereby understood and agreed that the cost of port charges, pilots and all other expenses, incurred by reason of such delay, shall be for Charterer's account.~~

Off-hire Option

6. All or any part of the time Vessel is off-hire during the original term of this Charter, or any extension thereof due to off-hire accumulation, shall be added to the term of the Charter, if Charterer so elects and gives Owner written notice thereof at least ONE month prior to expiry of the term of this Charter as so extended.

Loss of Vessel

7. Should Vessel be lost or become a constructive total loss, hire shall cease on the day of her loss or constructive total loss, or, missing, from the date when last heard of, and any hire paid in advance and not earned shall be returned to Charterer. If Vessel is missing or off-hire at the time when hire becomes payable, payment of such hire shall be suspended until Vessel's safety is ascertained or the off-hire period ceases.

Liens

8. Owner shall have a lien on all cargoes and sub-freights for all amounts due under this Charter, and Charterer shall have a lien on Vessel for (i) all monies paid in advance and not earned, (ii) the value of fuel in Vessel's bunkers and (iii) all claims for damages arising from any breach by Owner of this Charter.

Advances

~~9. Any money or other consideration advanced by Charterer to Owner shall be repaid by Owner to Charterer upon the completion of the voyage. Such repaid fund shall be repaid by Charterer to Owner by the completion of the voyage. Charterer shall be responsible for the payment of all port charges, pilots and other expenses incurred by Vessel during the voyage. Charterer shall be responsible for the payment of all port charges, pilots and other expenses incurred by Vessel during the voyage. Charterer shall be responsible for the payment of all port charges, pilots and other expenses incurred by Vessel during the voyage.~~

Detention by Authorities or Legal Action

10. In the event of detention of Vessel by any governmental authority, or by any legal action against Vessel or Owner, whereby Vessel is rendered unavailable for Charterer's service for a period of thirty (30) days or more, unless brought about by act or neglect of Charterer Charterer may, by written notice given before Vessel is free and ready to resume service, elect to terminate this Charter, or to suspend

Dry Docking

Owner or
Charterer
To Provide

12. (a) Owner will provide and/or pay for (i) provisions, supplies, deck and engine stores, galley and cabin stores, all P. & I., Hull and other insurance on Vessel, wages of Master, officers and crew, consular fees pertaining to the Master, officers and crew, and all water used by Vessel if a motor ship, (ii) fuel and crew (iii) at the monthly rate of \$1000.00 (iv) Consular fees of \$100.00 per month.

(c) Notwithstanding the provisions of paragraph (b) (i) of this Article, Owner shall reimburse Charterer for any diesel oil, fuel and water expended or consumed in a General Average situation and also during a consequent related drydocking or repair of the Vessel.

Duties of Master

(d) Master shall be furnished by Charterer, from time to time, with all requisite instructions and sailing directions, and both he and the Engineers shall keep full and correct logs of the voyages, which shall at all times be available to Charterer and its Agents, and all reports, statements, or such other forms or reports as Charterer may require, shall be sent to Charterer from each port of call.

Condition of Tanks

14. Charterer will redeliver Vessel to Owner at the expiry of this Charter with tanks in condition suitable for the carriage of the cargo defined in Article 1 (c) of this Charter. If under Article 1 (c) Charterer has the option for clean and/or dirty trading then cargo tanks on delivery may be clean or dirty at Charterer's option. In no event shall Charterer be obligated to redeliver Vessel gasfree.

Previous Cargoes

15. The last two successive cargoes carried, or to be carried, by Vessel immediately preceding her entering upon this Charter consist or will consist of **Crude oil**

Sale Berth

16. Vessel shall be loaded and discharged in or at any port, berth, dock, anchorage, submarine line, or other place (e.g., along lighters), as Charterer may direct. Charterer shall exercise due diligence to assure that Vessel is employed only between and at ports, berths, docks, anchorages, submarine lines, or other places where she can always lie safely afloat. ~~but Charterer shall not be responsible for any loss or damage to cargo or for any delay to the vessel caused by interference with or obstruction of the vessel's access to or from any such place.~~

Use of Vessel

17. (a) The whole reach and burden of Vessel (but not more than she can reasonably stow and safely carry) shall be at Charterer's cost, reserving appropriate space for Vessel's Master, Officers, Crew, tackle, apparel, furniture, fuel, provisions and stores.

Oil Pollution	18. Owner undertakes that Master will at all times comply with Charterer's requirements, which Charterer will instruct Master, for avoidance of pollution of the sea by oil and will retain on board all oily residues at all times and be able to pump such residues ash either separately or commingled with dirty ballast or cargo as Charterer may require.
Passengers and Super-Cargo	19. Charterer, at its risk and responsibility, may send passengers and/or super-cargo in available accommodations in Vessel upon voyage made under this Charter, with Owner to provide provisions and all requisites, except liquors, and Charterer to pay at the rate \$3.00 (or 21s/6d) per diem for each person during the time of such travel.
Bills of Lading	20. Bills of Lading shall be signed at any rate of freight Charterer or its Agents may direct, Master attending daily, if required, at offices of Charterer or its Agents to so sign. Charterer shall indemnify Owner from all consequence or liabilities that may arise from Master, Charterer or its Agents signing Bills of Lading, or other documents, at the request of Charterer or its Agents, or any irregularity in such papers supplied by Charterer or its Agents.
War Clauses	<p>21. (a) No contraband of war shall be shipped, but petroleum and/or its products shall not be deemed contraband of war for the purposes of this Article. Vessel shall not, however, be required, without the consent of Owner, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations or hostilities, whether there be a declaration of war or not, where it might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any other purported governmental organization maintaining naval, military or air forces).</p> <p>(b) For the purposes of this Article it shall be unreasonable for Owner to withhold consent to any voyage, route, or port of load or discharge if insurance against all risks defined in Article 21 (a) is then available commercially or under a Government program in respect of such voyage, route or port of loading or discharge. If such consent is given by Owner, Charterer will pay the provable additional cost of insuring Vessel against all war risks in an amount equal to the value under her ordinary marine policy but not exceeding \$5,500. If such insurance is not obtainable commercially or through a Government program, Vessel shall not be required to enter or remain at such port or zone.</p> <p>(c) In the event of the existence of the conditions described in Article 21 (a) subsequent to the date of this Charter, or while Vessel is on hire under this Charter, Charterer shall, in respect of voyages to any such port or zone, assume the provable additional cost of war risk and insurance properly incurred in connection with Master, officers and crew as a consequence of such war, warlike operations or hostilities.</p> <p>(d) The provisions of this Article 21 shall apply with the same manner and the same effect to the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.</p>
Requisition	22. Should Vessel be requisitioned for use by any government or governmental authority during the term of this Charter, or any extension thereof, Vessel shall be off-hire hereunder during the period of such requisition, and any hire or other compensation paid in respect of such requisition shall be for Owner's benefit. Charterer may add up to one-half of such requisition period to the term of the Charter if Charterer so elects in the manner provided in Article 6 hereof.
Protection and Indemnity	23. Owner shall, at its expense, throughout the period of this Charter, have Vessel entered in a Protection and Indemnity Association, Club, or good standing, in both Protection and Indemnity clauses.
Damage to, or Claims on, Cargo	24. Owner guarantees that Vessel is constructed and equipped to carry, without admixture, at least Three (3) qualities or descriptions of oil but, subject to this, neither Owner nor Vessel shall be responsible for any admixture if more than Three (3) qualities of oil are shipped, nor for leakage, contamination or deterioration in quality of the cargo, unless the admixture, leakage, contamination or deterioration results from (i) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by exercise of due diligence, or (ii) error or fault of the servants of Owner in the loading, stowage, discharge or unloading of the cargo.
Equipment	25. Charterer, subject to Owner's approval, may at its expense and time fit any additional pumps and/or gear for loading or discharge of cargo, or equipment of any other nature, which it may require beyond that on board at commencement of Charter, and to make the necessary connections with steam or water pipes, which pumps, gear or equipment shall be Charterer's property, and Charterer may remove same at its expense and time during or at the expiry of this Charter, but leaving Vessel in her original condition except for reasonable wear and tear.
House Flag	26. Charterer may fly its house flag and paint Vessel's funnel with its own colors or affix thereto Charterer's stack insignia, if desired, at Charterer's expense and time.
Salvage	27. All salvage monies earned by Vessel shall be divided equally between Owner and Charterer after deducting Master's, officers' and crew's share, legal expenses, hire of Vessel during time lost, value of fuel consumed, repairs of damage, if any, and any other extraordinary loss or expense sustained as a result of the salvage service.

Exceptions

28. Vessel, her Master or Owner, shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage arising or resulting from: act, neglect, default or barratry of Master, pilots, crew or other servants of Owner in the navigation or management of Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding or peril, danger or accident on the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or inherent vice of the cargo; any act or omission of Charterer or Shipper, Consignee or Owner of the cargo, their Agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of Vessel unless caused by want of due diligence on the part of Owner to make Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of Owner. And neither Vessel, her Master or Owner, nor Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss, damage, delay or failure in performing hereunder arising or resulting from act of God; act of War; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond or other security is promptly furnished to release Vessel or cargo; strike, lockout, stoppage or restraint of labor, picketing, boycotting, or other labor disturbances or interruptions, from whatever cause, either partial or general; or riot or civil commotion. This Article is not to be construed as in any way affecting the provisions for cessation of hire as provided in this Charter.

Negligence of Pilots, Etc.

29. (a) Charterer shall not be held responsible for losses sustained by Owner or Vessel through the negligence of pilots, tugboats or stevedores, even though Charterer and/or its Agents engage or furnish such services. Owner hereby authorizes Charterer and its Agents to bind Vessel and its Owner to all the terms and conditions of written or implied contracts or agreements for pilotage, towing or stevedoring in accordance with established local practice in the ports where such services are engaged, and Owner shall indemnify and hold Charterer and its Agents harmless from all damages and expenses that may be sustained or incurred in the event of Charterer and/or its Agents engaging or furnishing such services.

(b) Charterer shall have the option of using its own tugs or pilots, or tugs owned or pilots employed by subsidiary or related companies, in the towing, docking, undocking, piloting or other assistance of Vessel. In this event, the terms and conditions for such services prevailing in the port where such services are rendered, and applied by independent tugboat owners or pilots, shall be applicable, and Charterer, its subsidiaries and their pilots shall be entitled to all the exemptions from and limitations of liability applicable to said independent tugboat owners or pilots and their published terms and conditions. The exemption from and limitation of liability accorded Charterer, its subsidiaries or related companies and their pilots shall also include services rendered by pilots when no tugboats are in attendance of Vessel.

Lay-Up

30. (a) Charterer shall have the option of laying up Vessel for all or any portion (exceeding 30 days) of the Charter period, in which case hire hereunder shall continue to be paid, but there shall be credited against such hire the whole amount which Owner shall save (or reasonably should save) during such period of lay-up through reduction in expenses, less any extra expenses to which Owner is put as a result of such lay-up.

(b) Should Charterer, having exercised said option, desire Vessel again to be put into service, Owner shall, upon receipt of written notice thereof by Charterer, restore Vessel to service as promptly as possible. The option granted to Charterer may be exercised one or more times during the term of this Charter or any extension thereof.

Law

31. (a) This Charter and its performance shall be construed, interpreted and governed by the applicable law of the United States or England, except in the case of Average or General Average which shall be settled according to York/Antwerp Rules, 1950 (excluding Rule 22) and, as to matters not therein provided for, according to the usages and customs of the Port of New York/~~London~~. If a General Average statement is required, it shall be prepared at New York/~~London~~ by adjusters appointed by Charterer, subject to approval of Owner, who are to attend to the settlement and collection of the General Average, subject to customary charges. Should Vessel put into a port of distress or be under Average, she shall be consigned to Charterer's Agents, paying them the usual charges and commissions.

(b) Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to Owner or Chartered Owner of a Vessel, whether construed to be a private carrier, contract carrier or common carrier, by any statute or rule of law for the time being in force, unless otherwise in this Charter expressly provided.

Sub-Charter or Assignment

32. Charterer may sublet or assign this Charter to another, but Charterer shall remain responsible for the continued performance hereunder.

New Jason Clause

33. In the event of accident, danger, damage or disaster before or after the commencement of any voyage performed hereunder, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequence of which Vessel is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Vessel or its Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.

Liabilities for Salvage

34. If a salving ship is owned or operated by Owner, salvage shall be paid for as fully as if the salving Vessel belonged to a stranger. Such deposit as Owner or Agents may deem sufficient to cover the estimated contribution of the cargo in General Average, or salvage or special charges solely in respect of the cargo, shall, if required, be made by the shippers, consignees or owners of the cargo to Owner before delivery of the cargo. In lieu of said deposit, Charterer may give Owner a written guarantee to pay any contribution by the cargo, or any salvage or special charges thereon, as may ultimately be required to be paid by the shippers, consignees or owners of the cargo.

Notices

35. Any notice which Charterer is required to give to Owner hereunder shall be addressed (i) to Owner at its place of business first designated in this Charter, or (ii) to Owner's Agent **Interocean Shipping Company**

25 Broadway, New York, New York

Any notice which Owner is required to give to Charterer hereunder shall be addressed (i) to Charterer at its place of business first designated in this Charter or (ii) to Charterer's Agent **National Shipping and Trading Corporation**

10 Columbus Circle, New York, New York

Any notice given by letter by either party shall, irrespective of any provision of law otherwise applicable, be deemed to have been given when such notice, addressed to the other party, or to Owner's or Charterer's Agent, at its place of business designated in this Charter, is posted.

Commission

36. Any commission which may be payable as a result of fixing this Charter shall be for the account of Owner.

Arbitration

37. Any dispute arising under this Charter shall be settled by arbitration in New York/~~London~~. The party requesting arbitration shall serve upon the other party a written demand for arbitration with the name and address of the arbitrator appointed by it, and such other party shall within twenty (20) days thereafter appoint an arbitrator, and the two arbitrators so named, if they cannot agree, shall appoint a third, and the decision or award of any two shall be final and binding upon the parties. Should the party upon whom the demand for arbitration is served fail or refuse to appoint an arbitrator within twenty (20) days, the single arbitrator shall have the right to decide alone, and his decision or award shall be final and binding upon the parties. The arbitrators shall have the discretion to impose the cost of the arbitration upon the losing party, or divide it between the parties on any terms which may appear just. Any decision or award rendered hereunder may be made and entered as a rule or judgment of any Court, in any country, having jurisdiction.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS CHARTER TO BE EXECUTED IN DUPLICATE THE DAY AND YEAR HEREIN FIRST ABOVE WRITTEN.

Witness

Witness

INTEROCEAN SHIPPING COMPANY

(OWNER)

By _____

**HELLENIC INTERNATIONAL
SHIPPING S.A.**

(CHARTERER)

By _____

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EXHIBIT "C" TO PETITION

BETHLEHEM NYC [Stamped] MAR 24 11 47 AM '71

POTEN AND PARTNERS INC MAR 24

ATTENTION: MR. A. GERMANO

WE QUOTE BELOW FOLLOWING RECEIVED FROM
NATIONAL SHIPPING AND TRADING CORPORATION

PLEASE PROMPTLY CONVEY TO THE [SIC] CHARTERERS
THE FOLLOWING MESSAGE

YOU HAVE BEEN PREVIOUSLY ADVISED THAT
DUE TO THE ABSENCE OF MEETING OF THE
MINDS OF THE PARTIES REGARDING ALL DETAILS
NECESSARY TO A COMPLETED CHARTER
AGREEMENT NEGOTIATIONS HAVE BEEN TERMINATED
WITHOUT MUTUAL AGREEMENT.

WE FURTHER ADVISE YOU THAT YOUR LAST ATTEMPT
BY TELEPHONE ADVICE TO THE BROKERS TO BELATEDLY
AND UNILATERALLY AGREE TO CONTRACTUAL DETAILS
WHICH WERE PREVIOUSLY DISPUTED IN NO WAY IS
BINDING OR AGREEABLE TO OUR PRINCIPALS SINCE
NEGOTIATIONS TERMINATED EARLIER

ABOVE REFERS TO S/T OSWEGO RELIANCE

PLSE AK

GGGG

RCVD WELL TU

BIBI

THEOTRAN NY

BETHLEHEM NYC

POTEN PTNRS

P

EXHIBIT "D" TO PETITION

POTEN PTNRS
1 TAB NY 3X24X71

[Stamped] MAR 24 3:37 PM '71

POTEN AND PARTNERS

IN RESPONSE TO YOUR TELEX OF MARCH 24, PLEASE ADVISE CHARTERERS THAT WE CONSIDER THE OSWEGO RELIANCE CHARTERED TO THEM AND SHALL HOLD THEM LIABLE FOR ANY DAMAGES THAT MAY RESULT FROM A BREACH OF THIS CHARTER. WE DISAGREE THAT THERE WAS NO MEETING OF THE MINDS RATHER AS IS NORMAL PRACTICE WE WERE ATTEMPTING TO ARRIVE AT MUTUALLY SATISFACTORY LANGUAGE FOR TWO RELATIVELY MINOR POINTS. AS YOU KNOW THE ITEM WHICH CAUSED THE MOST DELAY WAS TOVALOP. TOVALOP WAS A SUBJECT THAT CAME UP A DAY OR TWO AFTER THE FIXTURE. THIS FIXTURE AS INDICATED IN YOUR TELEX CONFIRMATION OF MARCH 17 WAS FIXED ON THE BASIS OF MOBILTIME WHICH MAKES NO MENTION OF TOVALOP. AFTER YOU ADVISED THAT CHARTERERS WOULD HAVE DIFFICULTY WITHOUT TOVALOP, WE, IN THE SPIRIT OF COOPERATION,—REGISTERED THE OSWEGO RELIANCE AND THE BALANCE OF OUR ORE/OIL FLEET IN TOVALOP FOR A PERIOD OF FIVE YEARS. WE ASSUMED THAT THE CHARTERER WOULD AT LEAST BEAR THE ONE YEAR TOVALOP COST OF THE OSWEGO RELIANCE. AT NO TIME WAS ANY LIMITATION PUT ON OUR EX-

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CHANGES AND WE BELIEVE DISCUSSIONS PROCEEDED BETTER THAN NORMALLY FOR A CHARTER OF THIS DURATION.

IN ACCORDANCE WITH OUR VERBAL ADVICE PLEASE PREPARE THE CHARTER FOR OUR SIGNATURE IMMEDIATELY. AS WE ADVISED VERBALLY, YOU MAY ADD TO THE MOBILTIME DRYDOCKING CLAUSE THE ADDITION PROPOSED BY CHARTERER ON MARCH 22 AND WE AGREE TO PAY COST OF TOVALOP. FURTHER, YOU MAY ADD THE RED SEA AS A DELIVERY RANGE AS PER CHARTERERS EXPRESSED DESIRE ON MARCH 23 AND OUR AGREEMENT ON THAT DATE. THE OSWEGO RELIANCE IS DUE IN THE RED SEA AND/OR THE PERSIAN GULF ON APRIL 1. PLEASE IMPRESS UPON THE CHARTERER THAT WE SHALL PURSUE THIS MATTER VIGOROUSLY AND TO A CONCLUSION AND DO ANY AND ALL THINGS NECESSARY TO PROTECT OUR INTEREST.

INTEROCEAN SHIPPING COMPANY

15TH LINES DELETE THE DASHES SHOWN
SHOULD READ FOR A PERIOD ETC

ENDOK BIBI

EXHIBIT "E" TO PETITION

BETHLEHEM NYC [Stamped] MAR 25 1:03 PM '71

POTEN AND PARTNERS INC MAR 25 17

ATTENT: MR. GERMANO

RECEIVED FOLLOWING CHARTERERS:—

QUOTE

ST OSWEGO RELIANCE

PLEASE ADVISE INTEROCEAN AS FOLLOWS

WE HAVE PASSED ON THE CONTENTS OF INTER-OCEANS MESSAGE OF MARCH 24, 1971 TO OUR PRINCIPALS AND HAVE BEEN INSTRUCTED TO REPLY AS FOLLOWS:

INTEROCEANS STATEMENTS ARE CLEARLY SELF SERVING, CONTRADICTORY TO THE CONCLUSIONS WHICH THEY PROPOT TO ESTABLISH AND CERTAINLY NOT CONSISTENT WITH ELEMEN-TARY PRINCIPALS OF CONTRACT LAW.

INTEROCEAN ADMITS THAT THERE REMAIN POITXXX POINTS WHICH WERE NOT AGREED UPON BY THE PARTIES. HELLENIC INTER-NATIONAL DID NOT CONSIDER THESE POINTS MINOR. HELLENIC INTERNATIONAL CONSIDERED /THESE OUTSTANDING POINTS AS INTEGRAL PARTS OF A PROPOSED AGREEMENT TO WHICH BOTH PARTIES MUST MUTUALLY AGREE IN ORDER TO HAVE A CONTRACT.

THE SUBSEQUENT ATTEMPTS OF INTEROCEAN TO REVIVE THE NEGOTIATIONS BY OFFERING

23a

BELATED UNILATERAL AGREEMENT OXX TO
CERTAIN OF THE OUTSTANDING POINTS CER-
TAINLY ARE NOT CONTRACTUALLY EFFECTIVE.
HELLENIC INTERNATIONAL RESPECTFULLY BUT
VERY STRENUOUSLY REITERATES THAT THERE
WAS NO MUTUAL MEETING OF THE MINDS ON
ALL THE TERMS OF THE PROPOSED AGREEMENT,
CONSEQUENTLY THERE IS NO CONTRACT.
HELLENIC INTERNATIONAL ASSURES INTER-
OCEAN AND IMPRESSES UPON INTEROCEAN
THAT IT IS COMMITTED AND IS READY, WILLING
AND ABLE TO MOUNT A VIGOROUS DEFENSE TO
PROTECT ITS PROPER INTERESTS

NATIONAL SHIPPING AND TRADING CORP
AS AGENTS FOR HELLENIC INTERNATIONAL

BETHLEHEM NYC
POTEN PTNRS
P

**Affidavit of Willy E. Gorrissen Sworn to June 25, 1971
in Support of Petition**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

{SAME TITLE}

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

WILLY E. GORRISSEN, being duly sworn, deposes and says:

1. I am presently Vice-President of Jones & Gorrissen, Inc., ship brokers, at 1301 Avenue of the Americas, New York, N.Y. I have been associated with this and predecessor firms since 1960. I have been actively engaged in the shipping business, both operations and chartering for 40 years.

2. In my experiences with charterparties, certain terms must be considered major, such as trading limits, cargo restrictions and of course the delivery date; redelivery date and the rates.

3. However, the wording of a drydocking clause in a charter must definitely be considered a very minor clause. Many vessels are fixed subject to drydocking clause and in

25a

my experience I have never had any serious problem with drawing up a drydocking clause satisfactory to both parties.

/s/ WILLY E. GORRISSEN

Sworn to before me this
25 day of June, 1971.

NORMAN T. KORB

Notary Public, State of New York

No. 52-7338250 Suffolk County

Term Expires March 30, 1972

Answer to Petition to Compel Arbitration

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

71 Civ. 3363

[SAME TITLE]

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

The Answer of National Shipping and Trading Corp.
and Hellenic International Shipping S.A. to the Petition
herein alleges upon information and belief:

First: Denies knowledge or information sufficient to
form a belief as to the allegations of paragraph First of the
Petition.

Second: Admits paragraph Second of the Petition.

Third: Denies each and every allegation of paragraph
Third of the Petition except admits that at all material
times National Shipping and Trading Corp. acted as agent
for Hellenic International Shipping S.A.

Fourth: Denies each and every allegation of paragraph
Fourth of the Petition except admits that Hellenic Inter-
national Shipping S.A. is a corporation existing under the
laws of the Republic of Panama.

Fifth: Denies each and every allegation of paragraphs
Fifth, Sixth and Seventh of the Petition except admits that

the "Mobilttime" form of charter party contains a clause 37 as set forth in paragraph Seventh of the Petition.

Sixth: Denies each and every allegation of paragraph Ninth of the Petition.

Seventh: Denies each and every allegation of paragraph Tenth of the Petition except admits the exchange of the Exhibits mentioned therein.

Eighth: Denies each and every allegation of paragraph Eleventh of the Petition.

Ninth: Denies each and every allegation of paragraph Twelfth of the Petition except admits that petitioner sent Exhibit "F".

Tenth: Admits paragraph Thirteenth of the Petition.

WHEREFORE, respondents demand a trial of the issue of the making of the alleged agreement to arbitrate pursuant to the Federal Arbitration Act (Title 9, U.S.C.A. section 4) and for such other and further relief as may be just in the premises.

Dated: New York, New York
November 2, 1971

HILL, BETTS & NASH

By DAVID I. GILCHRIST

A Member of the Firm

Attorneys for Respondents

26 Broadway

New York, New York 10004

**Opinion of Court of Appeals Decided June 23, 1972
(462 F.2d 673)**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 749—September Term, 1971.

(Argued May 23, 1972

Decided June 23, 1972.)

Docket No. 72-1150

INTEROCEAN SHIPPING COMPANY,

Petitioner-Appellee.

v.

NATIONAL SHIPPING AND TRADING CORPORATION and
HELLENIC INTERNATIONAL SHIPPING, S.A.,

Respondents-Appellants.

B e f o r e :

FRIENDLY, *Chief Judge*, and
FEINBERG and TIMBERS, *Circuit Judges*.

Appeal from an order of the District Court for the Southern District of New York, Dudley B. Bonsal, *District Judge*, directing appellants to arbitrate petitioner's claim for breach of a charter party, pursuant to §4 of the Federal Arbitration Act, 9 U.S.C. §4 (1970).

Reversed and remanded.

DAVID I. GILCHRIST, New York, N.Y. (Eli Ellis, Mark M. Jaffe and Hill, Betts & Nash, New York, N.Y., on the brief), *for respondents-appellants*.

Opinion of Court of Appeals Decided June 23, 1972
(462 F.2d 673)

JAMES M. ESTABROOK, New York, N.Y. (Joseph R. Kelley, Jr., Lennard K. Rambusch and Haight, Gardner, Poor & Havens, New York, N.Y., on the brief), *for petitioner-appellee.*

TIMBERS, *Circuit Judge:*

The essential question on this appeal is whether, within the meaning of the Federal Arbitration Act, "the making of the arbitration agreement"¹ was in issue, thus requiring a trial of this question before directing appellants to proceed with the arbitration of a maritime dispute.

In July of 1971 Interocean Shipping Company, acting pursuant to the Federal Arbitration Act,² filed a petition in the district court to compel arbitration of a dispute arising under a charter party allegedly entered into by Interocean and appellants National Shipping and Trading Corporation and Hellenic International Shipping, S.A. The petition alleged that on March 17, 1971, National and Hellenic agreed to charter Interocean's vessel, the Oswego Reliance, for a period of approximately one year pursuant to the terms of the "Mobiltime" form charter, which included a clause providing for arbitration of "any dispute arising under [the] charter" Interocean further alleged that National and Hellenic repudiated this agreement on March 24, 1971. Appellants' answer denied the material allegations of the petition and demanded a trial. National's president, in an affidavit attached to the answer, stated that there had never been a meeting of the minds as to all the essential elements of a charter party. On December 30, 1971, without conducting a trial, the district

¹ §4 of the Federal Arbitration Act, 9 U.S.C. §4 (1970).

² 9 U.S.C. §§1-14 (1970).

Opinion of Court of Appeals Decided June 23, 1973
(462 F.2d 673)

court concluded that the making of the arbitration agreement was not in issue and granted the petition.³ For the reasons stated below, we reverse and remand for a trial pursuant to §4 of the Federal Arbitration Act, 9 U.S.C. §4 (1970).

I.

Interocean relied primarily on a fixture note dated March 17, 1971 to show that National and Hellenic had agreed to charter Interocean's vessel. This fixture note was prepared by Poten & Partners, Inc., charter brokers, and was sent to the parties on March 17. It indicated that Hellenic, a subsidiary of National, had agreed to charter the Oswego Reliance for approximately one year in accordance with the terms of a "Mobiltime" form charter, excluding clauses 9, 12(a)(ii), 12(b)(ii) and 12(b)(iii) and subject to a suitable dry-dock clause to be worked out for November dry-docking. The charter was to begin with the delivery of the vessel to Hellenic in the Persian Gulf between March 31 and April 15, 1971.

To substantiate its claim that a charter agreement existed, Interocean also attached to its petition a copy of an unexecuted "Mobiltime" form prepared by the broker on March 17 and sent to the parties. This charter party was intended to reflect the terms of the fixture note allegedly agreed upon by all the parties on March 17. However, while the broker had deleted the clauses referred to in the fixture note, it also had deleted that clause of the "Mobiltime" form pertaining to insurance coverage for the vessel. This charter party also set forth a dry-dock clause which

3 An order compelling arbitration under §4 of the Federal Arbitration Act is a final order and is appealable under 28 U.S.C. §1291 (1970). *Hellenic Lines, Ltd. v. Louis Dreyfus Corporation*, 372 F.2d 753, 754 (2 Cir. 1967); *Chatham Shipping Co. v. Fertex S.S. Corp.*, 352 F.2d 291, 294 (2 Cir. 1965).

Opinion of Court of Appeals Decided June 23, 1973
(462 F.2d 673)

would have required Hellenic to dry-dock the vessel in Spain, Portugal or Japan in November of 1971. Moreover, unlike the fixture note, which, after referring to Hellenic, added "subsidiary of National Shipping & Trading . . .", the charter party which was sent to Hellenic mentioned National as charterer's agent.

Following the receipt of the March 17 fixture note, there ensued a series of communications between Interocean and Hellenic concerning the terms of the charter party which Interocean contends were finalized on March 17. While it is not entirely clear upon which terms these negotiations focused, an examination of the telex messages attached to Interocean's petition reveals that Hellenic did request the inclusion of the Red Sea within the delivery range of the vessel. Hellenic also raised questions regarding Interocean's intention to enter its vessel in the Tanker Owners Voluntary Agreement against Liability for Oil Pollution (Tovalop) and the allocation of the costs of such insurance. Finally, on March 24, 1971, Hellenic broke off negotiations with Interocean, contending that there had never been agreement as to all the essential terms of a charter party.

After National and Hellenic refused to proceed with the arbitration of Interocean's claim for \$1.4 million in damages for appellants' breach of the charter party allegedly entered into on March 17, 1971,⁴ Interocean filed the instant petition to compel arbitration.

II.

Section 4 of the Federal Arbitration Act provides in relevant part that "[i]f the making of the arbitration

⁴ We hold that "the failure, neglect, or refusal to perform" the arbitration agreement is not in issue. 9 U.S.C. §4 (1970). Accordingly, appellants are not entitled to a trial on this issue.

Opinion of Court of Appeals Decided June 23, 1972
(462 F.2d 673)

agreement . . . be in issue, the court shall proceed summarily to the trial thereof." ⁵

In the instant case, National and Hellenic deny the existence of the charter party which contains the arbitration clause upon which Interoccean's petition relies. There can be no doubt that the question of the very existence of the charter party which embodies the arbitration agreement is encompassed within the meaning of "the making of the arbitration agreement." As we said in *In Re Kinoshita & Co.*, 287 F.2d 951, 953 (2 Cir. 1961), "if it was claimed that . . . there had at no time existed as between the parties any contractual relation whatever, . . . a trial of this issue would be required before an order could be issued directing the parties to proceed to arbitration." See also *Kulunkundis Shipping Co. v. Amtorg Trading Corp.*, 126 F.2d 978, 985-86 (2 Cir. 1942); *Superior Shipping Company v. Tacoma Oriental Line, Inc.*, 274 F.Supp. 25, 26 (S.D.N.Y. 1967); *Sinva, Inc. v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 253 F.Supp. 359, 364-65 (S.D.N.Y. 1966). Accordingly, if the making of the charter party was in issue, within the meaning of § 4 of the Arbitration Act, the district court should have proceeded to trial of this question.

In deciding whether the making of the charter party was in issue, the principles enunciated in *Almacenes Fernandez, S.A. v. Golodetz*, 148 F.2d 625 (2 Cir. 1945), are controlling. There, in discussing what a party must show in order to place the making of an arbitration agreement in issue, we said:

"To make a genuine issue entitling the plaintiff to a trial by jury, an unequivocal denial that the agreement had been made was needed, and some evidence should have been produced to substantiate the denial."
148 F.2d at 628.

⁵ 9 U.S.C. §4 (1970).

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Accord, Ocean Industries, Inc. v. Soros Associates International, Inc., 328 F.Supp. 944, 948 (S.D.N.Y. 1971).

Here we believe that National and Hellenic satisfied the test articulated in *Almacenes Fernandez, S.A. v. Golodetz, supra*. Their answer to Interocean's petition categorically denied entering into a charter party with Interocean. Moreover, while appellants might be faulted for not presenting their arguments to the district court in a more coherent fashion, affidavits and exhibits attached to the petition and answer did tend to substantiate appellants' denial of the existence of contractual relations.

In particular, the fixture note, the "Mobiltime" form charter and the telex messages exchanged between Interocean and Hellenic on March 24, 1971 were sufficient to place in issue the question whether there had been a meeting of the minds as to all essential terms of a charter party on March 17. Under the general principles of contract law,⁶ there is no contract if the parties fail to agree on all the essential terms or if some of the terms are too indefinite to be enforceable. See *V'Soske v. Barwick*, 404 F.2d 495, 500 (2 Cir. 1968), *cert. denied*, 394 U.S. 921 (1969); *Ginsberg Machine Co. v. J. & H. Label Processing Corp.*, 341 F.2d 825, 828 (2 Cir. 1965). Here Interocean concedes, as it must in light of the fixture note, that no agreement was reached on a dry-dock clause, but denies that such a clause is an essential term of a charter party. If this were the only issue in the case, we might be inclined to affirm the order of the district court. See *Restatement (Second) of Contracts* §32(3), Illustration 11 (Tent. Draft No. 1, 1964). However, the telex messages of March 24 tend to show that Interocean and Hellenic

⁶ A charter party is merely a contract and hence is subject to all the rules and requirements of contract law. *Gilmore and Black, The Law of Admiralty* 172 (1957).

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had failed to reach agreement on March 17 on several items which might well be integral elements of a charter party. Thus, Interocean's message of March 24 indicates that Hellenic wanted the delivery range of the vessel to include the Red Sea. Furthermore, the fixture note of March 17 indicated that the insurance clause of the "Mobiltime" form would be part of the charter agreement. This clause, however, was deleted from the "Mobiltime" form which the brokers sent to Hellenic. When this deletion is considered in conjunction with Interocean's telex message of March 24 referring to the difficulties in reaching agreement over Interocean's participation in Tovalop, there is enough to place in issue the question of whether the parties agreed upon insurance coverage for the vessel. Whether the parties ever had a meeting of the minds as to the "delivery range" and insurance terms of the charter party and whether these terms, in addition to the drydock clause, can be considered essential terms of a charter party, present issues of fact which can only be determined after a hearing where evidence is received. *Cf. El Hoss Engineer & Transport Co. v. American Independent Oil Co.*, 289 F.2d 346, 351 (2 Cir.), *cert. denied*, 368 U.S. 837 (1961); *Hellenic Lines, Ltd. v. Louis Dreyfus Corp.*, 249 F.Supp. 526, 527 (S.D.N.Y. 1966), *aff'd*, 372 F.2d 753 (2 Cir. 1967).

We also believe that appellants are entitled to a trial pursuant to §4 of the Arbitration Act on whether Poten & Partners, Inc., the charter brokers, had authority to act for National and Hellenic. Appellants' answer denied the material allegations of paragraph five of the petition, which alleged that appellants had entered into a charter agreement with Interocean on March 17 through Poten & Partners, Inc. This denial is broad enough to encompass the question of Poten's authority to act for National and Hellenic. Moreover, a close examination of the fixture

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note lends some support to appellants' denial that Poten was authorized to act for them. This note, which was prepared by Poten and addressed to Interocean, confirmed "having fixed for *your account* today . . ." a charter agreement with Hellenic. (Emphasis added). This quotation indicates that Poten may have been acting solely for Interocean. In any event, appellants presented enough to place in issue the scope of Poten's authority. The resolution of this issue requires a hearing where evidence can be received not only on the relationship between the various parties, but also on the customary practice of the charter brokerage business.

Finally, it is well established that whether a person is a party to the arbitration agreement also is included within the statutory issue of "the making of the arbitration agreement." *Pan American Tankers Corp. v. Republic of Vietnam*, 296 F.Supp. 361, 367 (S.D.N.Y. 1969); *Tubos De Acero de Mexico, S.A. v. Dynamic Shipping, Inc.*, 249 F.Supp. 583, 587 (S.D.N.Y. 1966); *Instituto Cubano De Estab. Del Azucar v. The Theotokos*, 153 F.Supp. 85, 86 (S.D.N.Y. 1957). Here we believe there is enough in the record to place in issue the question of whether National is a party to the charter agreement and hence to the arbitration agreement contained therein.

This question is placed in issue by the fact that National is not accorded the same status in either Interocean's petition, the "Mobiltime" form charter or the fixture note. The petition merely states that Hellenic is a subsidiary of National, which fact would not in itself be sufficient to make National liable for breach of agreement to charter. Moreover, the "Mobiltime" form sent to Hellenic refers to National as the charterer's agent. Since Hellenic was a disclosed principal, National's acting as agent would not make it a party to the charter agreement. Restatement

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(Second) of Agency §320 (1958). Furthermore, the fixture note, after referring to Hellenic, adds "subsidiary of National Shipping & Trading with appropriate letter of guarantee." Interocean now points to the fixture note as showing that National was the guarantor under the charter. If in fact National were a surety, however, it still could not be held accountable for Hellenic's breach of the charter agreement. Merely agreeing to act as surety for a charter party is not a maritime contract. *Pacific Surety Co. v. Leatham & Smith Towing & Wrecking Co.*, 151 F. 440, 443-44 (7 Cir. 1907). See also *Kossick v. United Fruit Co.*, 365 U.S. 731, 735 (1961). This suretyship therefore would be subject to the New York statute of frauds. Since National's alleged guarantee was not in writing, it would not be enforceable. N.Y. General Obligations Law §5-701 (2) (McKinney 1964). Thus, while it is impossible to determine National's status on the basis of this confused record, there was sufficient uncertainty to entitle National to a trial on this issue.

We emphasize that we do not decide today whether a valid charter agreement existed and whether National was a party to that agreement. We merely hold that appellants have shown enough to entitle them to a trial of these issues pursuant to §4 of the Arbitration Act. As in *El Hoss Engineer & Transport Co. v. American Independent Oil Co.*, *supra*, 289 F.2d at 351:

"[T]here would appear to be issues of fact These issues should not be determined on affidavits, but rather a full trial should be had."

Reversed and remanded for further proceedings not inconsistent with this opinion.

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dated February 28, 1974**

HAIGHT GARDNER POOR & HAVENS, ESQS., New York, New York, Attorneys for Petitioner (JAMES M. ESTABROOK and LENNARD R. RAMSBUSCH, ESQS., of Counsel).

HILL BETTS & NASH, ESQS., New York, New York, Attorneys for Respondents (DAVID GILCHRIST and MARK JAFFE, ESQS., of Counsel).

RYAN, J.:

A formal trial of this non-jury proceeding to enforce arbitration was held by me following remand from the Second Circuit Court of Appeals to determine whether a binding contract had been entered into by the parties which, by its terms, requires them to arbitrate the question of whether there was a breach of the charterparty in suit by the defendants. See *Interocean Shipping Company v. National Shipping & Trading Corporation and Hellenic International Shipping, S.A.*, 462 F. 2d 673 (C.A. 2, 1973).

Petitioner herein had successfully moved in the District Court for an order compelling arbitration, but, on appeal by respondents, the Court of Appeals remanded the proceeding and directed the District Court to determine whether there was a charterparty in effect between the parties which would require them to arbitrate their dispute.¹ The Court of Appeals pointed out that a trial

¹ Federal Arbitration Act, 9 U.S.C. 4. Section 4: "If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. * * *"

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should determine whether in all the conversations between the parties there was a meeting of the minds which thereafter memorialized in a fixture letter or memorandum by which NATIONAL was bound.

Specifically, with respect to the question whether there was a meeting of the minds, the Court of Appeals held that this trial should determine whether the parties had agreed on drydocking, insurance and delivery range, and if they had not, whether these were such material items as to frustrate the existence of a contract; with respect to whether NATIONAL was bound, that this trial should determine whether the broker had authority to bind NATIONAL. NATIONAL was acting as agent for a disclosed principal—the charterer, HELLENIC—or was a guarantor of performance by Hellenic, the charter party, and, if a guarantor, whether the fixture letter was sufficient to satisfy the Statute of Frauds of New York as to such guarantee (N.Y. General Obligations Law, Section 5-701 (2), McKinney's 1964).

Petitioner urges that there was a binding charterparty under which NATIONAL was bound as guarantor and as parent of HELLENIC; respondents dispute this.

The overwhelming evidence, both testimonial and documentary, is that there was a charterparty agreement entered into by the parties, the essential terms of which were contained in the fixture letter which bound both, and that performance by the charterer HELLENIC was guaranteed by NATIONAL, and that the guarantee was set forth in the fixture letter signed by the broker, who was the agent for both parties. I find that, on March 17, 1971 the facts were as follow:

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Petitioner was a Liberian corporation and a wholly owned subsidiary of Bethlehem Steel Corporation, and the owner of the Liberian flag oil/ore carrier OSWEGO RELIANCE, a tank vessel of 49,283 dead weight tons; Anthony Germano was an employee of Steamship Service, Inc., a wholly owned subsidiary of Bethlehem Steel Corporation, which acted as the house broker for vessels owned by Bethlehem Steel Corporation or its subsidiaries; Respondent NATIONAL, a New York corporation, was in the business of operating and chartering tankers on behalf of various principals. The stock of NATIONAL was held in trust for the benefit of Harry Theodoracopulos, its Vice-President; Thomas Spears was President of NATIONAL; Respondent HELLENIC was a Panamanian corporation, the stock of which was owned by Hellenic Shipping & Industries, Ltd., of Greece. The principal shareholder of Hellenic Shipping & Industries, Ltd., of Greece was John Theodoracopulos, the father of Harry Theodoracopulos; the firm of Poten & Partners was a ship-brokerage firm in New York; Francis DeSalvo, presently Chief Executive Officer of Poten & Partners, was a broker employed by said firm; prior to joining Poten & Partners, DeSalvo had had five years' experience doing chartering work for Amoco.

Petitioner's principal witness, DeSalvo, testified that he had known Harry Theodoracopulos (H.T.) for many years and had had close business associations with him in the chartering of ships; that on March 17, 1971 he had lunch with H.T. at the latter's invitation, at which time they discussed the availability of a specific tanker and the general tanker market; that, upon DeSalvo's return to his office, he received a telephone call from H.T. inquiring as to the availability of the tanker and that he,

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DeSalvo, then called Germano at Steamship Service to ascertain whether the OSWEGO RELIANCE was available; that, upon being informed that it was, he relayed this message to H.T. and, upon asking him whether he was interested, H.T. replied in words to the effect, of "Yes, bring a firm offer in." DeSalvo then called Germano, requesting a firm offer which Germano did not give immediately because he wanted to look into the question of a guarantee from NATIONAL as he did not know HELLENIC; upon inquiry from Germano as to the identity of the charterer, DeSalvo had said it was "represented" by NATIONAL; Germano said that it would be necessary to see what arrangements could be given for guarantees and promised to call DeSalvo, which he did shortly after, offering the OSWEGO RELIANCE to DeSalvo "for reply 4:55 today"; DeSalvo's contemporaneous notes show as follows:

"Bethlehem Steel

National Shipping & Trading Reply 4:55 today
o/o Oswego Reliance
49,283 DWT 39' 5/8"
16-1/2 knots 100 c cubic 1,968,842 98%
crude oil/or DBB max 3 grades net seg. max 135
coiled wing tanks only

"Del. 1 safe PG ex FA at charterers' option
Lay day March 31/April 15 ETA April 1
Redel. 1 safe PG owner's option
WW with IWL ex China, N.Vietnam, N. Korea,
Cuba, Israel and all other commie countries
Overtime and petties—\$750/mo.
Rate: \$5.75/ DWT/NW
Suitable drydock clause (scheduled Nov. 15 days)

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1 year + 15 days
Mobil time sub-details
1-1/4 P & P 1 1/4 steam ship service"

DeSalvo relayed Germano's offer to H.T. at about 4 PM on March 17, 1971; H.T. made several counter offers orally on the telephone to DeSalvo, also "for reply 4:55 pm", which were relayed to Germano, who accepted some and rejected some, and these, in turn, DeSalvo relayed to H.T. DeSalvo's notes, made at the time of the telephone calls, reflect what the offers and counter offers were. The items which were being negotiated were charterhire, which H.T. proposed at \$5.50 (Germano at \$5.75); terms of the charter, 1 year plus or minus 30 days (Germano, 1 year, 15 days); and overtime and petties \$500 (Germano, \$750). H.T. also proposed that the Mobilttime form charter would exclude paragraphs 9, 12(a)II, 12(b)II and 12(b)III, and that a suitable drydock clause be worked out with sufficient advance notice. DeSalvo's notes also reflect that the charterer was to be HELLENIC, which H.T. had described to DeSalvo as a subsidiary of NATIONAL. H.T. at the time also inquired into the pumping capacity of the vessel; proposed a review of performance every six months; and inquired into the nature of the last two cargoes. All this took place at about 4 PM on March 17, 1971. H.T.'s counter offers were accepted by Germano with the exception of charterhire, which Germano quoted at \$5.65 and \$750 for petties to which H.T. countered with \$5.55 hire and \$600 for petties; Germano came back with \$5.60 charterhire and \$750 for petties. At about 4:45 p.m., DeSalvo transmitted this offer to H.T., who said in words to the effect "You are confirmed."

During these conversations DeSalvo had informed H.T. that Germano required a guarantee to which H.T. replied

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that "appropriate guarantees" would be given and that HELLENIC was a subsidiary of NATIONAL. Following the conversations that same afternoon DeSalvo, through Poten and Partners, sent telexes to both parties confirming the fixture of the OSWEGO RELIANCE as follows: The telexes were identical except for the addressee and the statement of the commissions payable by INTEROCEAN to Poten and Partners.

"THEOTRAN NY (or BETHLEHEM NYC)
POTEN AND PARTNERS INC. MAR 17 1971
ATTEN:
MR. H. THEODORACOPULOS (or MR. TONY GERMANO)

CONFIRM HAVING FIXED FOR YOUR ACCOUNT
TODAY AS FOLLOWS:

OWNER: INTEROCEAN SHIPPING COMPANY
CHARTERER: HELLENIC INTERNATIONAL SHIPPING S.A. OF PANAMA SUBSIDIARY OF NATIONAL SHIPPING AND TRADING WITH APPROPRIATE LETTER OF GUARANTEE
'OSWEGO RELIANCE'

49,283 DWT 39 FT 5/8 INCHES DRAFT CUBIC 98 PERCENT 1,968,842

3 PUMPS 1300 TWPB EACH

16.5 KNOTS ON 100 BUNKER C PER DAY

DELIVERY/REDELIVERY PG EXCLUDING FAO

AND ABADAN LAYCAN MARCH 31/APRIL 15 1971

ETA APRIL 1 1971 CRUDE AND/OR DPP MAX 3

GRADES WITHIN NATURAL SEGREGATIONS

MAINTAINING HEATING 135 DEG F

COILED WING TANKS ONLY

TRADING WORLDWIDE WITHIN 1 WL EXCLUDING

COMMUNIST COMMUNIST CONTROLLED

CHINA, NORTH VIETNAM, NOR KOREA, CUBA

PERIOD ONE YEAR PLUS OR MINUS 30 DAYS

MOBILTIME EXCLUDING CLAUSES 9, 12AII, 12BII,

12BIII

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"SUITABLE DRYDOCK CLAUSE TO BE WORKED
OUT FOR NOVEMBER DRYDOCKING ABOUT 15
DAYS WITH PROPER NOTICE

PERFORMANCE REVIEW EVERY SIX MONTHS
OVERTIME AND PETTIES \$750. PER MONTH
RATE 5.60 PER DWT PER MO PAYABLE U S
DOLLARS IN NEW YORK

THANK YOU FOR THE OPPORTUNITY TO CON-
CLUDE THIS BUSINESS

THEOTRAN NY" (or BETHLEHEM N.Y. plus Com-
missions)

The telex to Theotran was received in the office of NA-
TIONAL at 5:36 P.M. and studied by H.T. and Spears. On
the trial, both testified that they understood it. H.T. also
testified that he understood the word "fixed" to mean the
conclusion of a negotiation; neither H.T. nor Spears called
or telexed Poten & Partners back, commenting on or cor-
recting the fixture telex.

On the following day, DeSalvo and Germano drew up a
working copy of the charterparty and language for a dry-
docking clause; DeSalvo sent this copy of the charterparty
to INTEROCEAN and NATIONAL on March 19; on March 18
or 19, DeSalvo inquired of H.T. if he wanted to offer the
OSWEGO RELIANCE for subcharter, to which H.T. replied
that he did for a single voyage at a certain rate to Chev-
ron. DeSalvo was informed that Chevron would not con-
sider the OSWEGO RELIANCE unless she had Tovalop insur-
ance, which Bethlehem Shipping did not have at the time.²
DeSalvo inquired of Germano if he would approach the

² Tanker Owners Voluntary Agreement concerning liability for
oil pollution.

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owners about entering the tanker into Tovalop. Germano told DeSalvo that this would require the entry of the entire fleet of Bethlehem in Tovalop; that, since it was Friday, it was too late to contact their insurers in London; and that he could have no answers from his principals until Monday, March 22. All of these negotiations were had with the knowledge of H.T., who had been the one to request of Germano, through DeSalvo, to provide such coverage for the OSWEGO RELIANCE. This was the first time that this insurance had been discussed or even mentioned. It formed no part of the Mobiltime Form Charter since this insurance did not come into effect until 1969 and the Mobiltime Form was printed in 1967. The Mobiltime Form was suggested by DeSalvo who, from his experience in fixing ships with H.T., knew that H.T. was familiar with it. The Mobiltime Form contained the arbitration clause, the words "sub-details" (i.e., subject to details in the telex), which DeSalvo testified meant in the industry "filling in the blanks", to supply the details of completing the charterparty form, e.g., the description of vessel, her fuel oil content, her speed, RPMs, the insurance valuation, in short, to fit the form to what had been orally agreed on so that "sub details" could vary from charter to charter depending on what details the parties had left to be filled in after agreement. DeSalvo testified quite clearly that, while the "details" might vary, "sub details" certainly did not mean subject to reviewing the whole negotiation again.

On March 23, Bethlehem Steel, because of the request of H.T. to obtain Tovalop for the OSWEGO RELIANCE, entered its entire fleet into Tovalop, according to the requirements of that insurer, and so notified DeSalvo, who informed H.T. of this, stating that it would be at charterer's ex-

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pense. H.T. did not agree to this and "stood fast" on its being at owner's expense.

On or about March 18 or 19, Germano suggested wording for the drydock clause, which the fixture letter had left open for discussion, and DeSalvo inserted it into the copy of the charterparty. At that time, DeSalvo had asked H.T. to suggest some acceptable language, but he never did. A copy of the charterparty containing the following language was sent to both parties on March 19 and received by them at the latest on March 22:

"11(b). Vessel requires drydock November 1971. It is the intention of the owners to drydock the vessel in Portugal, Spain or Japan and charter guarantees to place the vessel in position to drydock in any one of these countries."

As they had agreed in the fixture letter and as H.T. had requested Paragraph 12(a)II and (b)II and Paragraph 9 had been deleted. Paragraph 12(b)III recited the agreed-on \$750 for petties; delivery was fixed at a Persian Gulf Port excluding Fao and Abadan at owner's option; clause 23 which provided that owner would provide Protection and Indemnity Insurance (P & I) at its own expense, had been stricken; trading was limited to non-Communist controlled countries (Paragraph 3b).

Upon receipt of the charterparty on March 22, H.T. called DeSalvo and asked him to modify two clauses; to broaden delivery range to the Red Sea, which was agreed to by owner; and to permit trading with Communist China, which could not and was not agreed to by owner because the crew of the vessel was Nationalist China. H.T. made no comment about the language of the dry docking clause.

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About noon of March 23, 1971, H.T. went on vacation. During that afternoon, Spears told DeSalvo that the dry-docking language was not acceptable because he was unwilling to guarantee the position of the vessel in November. Although DeSalvo asked him for language that he could pass on to the owners, it was not until 5:15 P.M. that Spears called DeSalvo with proposed language for the dry docking clause as follows:

"Vessel requires drydocking about November, 1971, charterers will do all possible to position the vessel for discharge in the UKC MED or Far East area so that drydocking can be accomplished between October 15 and December 15, 1971."

In Spears' own words, this was language the charterer thought it "could live with" and he asked DeSalvo to transmit it to Germano. This was the exact language which appeared on DeSalvo's contemporaneous notes.

At 9 A.M. on March 24, Spears called DeSalvo and asked him if he had conveyed the proposed drydocking clause to Germano. When DeSalvo said he had not because he had received it after business hours, Spears told him not to pass it on.

Later that morning, DeSalvo called Spears and informed him that the owner had entered its fleet in Tonalop and that the cost of such coverage for the OSWEGO RELIANCE would be at the owner's expense as insisted upon by H.T.; and that it agreed to the language of charterer's drydocking clause.

About 11 A.M. of the same morning, Spears telexed DeSalvo repudiating the charter "due to the absence of meeting of the minds of the parties regarding all details necessary to a completed charter agreement."

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Later the same day, Poten & Partners sent a telex to charterers quoting a message from the owners to the effect that they were holding the charterer to the charter and that they considered the OSWEGO RELIANCE chartered, as follows:

"IN RESPONSE TO YOUR TELEX OF MARCH 24, PLEASE ADVISE CHARTERERS THAT WE CONSIDER THE OSWEGO RELIANCE CHARTERED TO THEM AND SHALL HOLD THEM LIABLE FOR ANY DAMAGES THAT MAY RESULT FROM A BREACH OF THIS CHARTER. WE DISAGREE THAT THERE WAS NO MEETING OF THE MINDS RATHER AS IN NORMAL PRACTICE WE WERE ATTEMPTING TO ARRIVE AT MUTUALLY SATISFACTORY LANGUAGE FOR TWO RELATIVELY MINOR POINTS. AS YOU KNOW THE ITEM WHICH CAUSED THE MOST DELAY WAS TOVALOP. TOVALOP WAS SUBJECT THAT CAME UP A DAY OR TWO AFTER THE FIXTURE. THIS FIXTURE AS INDICATED IN YOUR TELEX CONFIRMATION OF MARCH 17 WAS FIXED ON THE BASIS OF MOBILTIME WHICH MAKES NO MENTION OF TOVALOP. AFTER YOU ADVISED THAT CHARTERERS WOULD HAVE DIFFICULTY WITHOUT TOVALOP, WE, IN THE SPIRIT OF COOPERATION—REGISTERED THE OSWEGO RELIANCE AND THE BALANCE OF OUR ORE/OIL FLEET IN TOVALOP FOR A PERIOD OF FIVE YEARS. WE ASSUMED THAT THE CHARTERER WOULD AT LEAST BEAR THE ONE YEAR TOVALOP COST OF THE OSWEGO RELIANCE. AT NO TIME WAS ANY LIMITATION PUT ON OUR EXCHANGES AND WE BELIEVE DISCUSSIONS PROCEEDED BETTER THAN NORMALLY FOR A CHARTER OF THIS DURATION.

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"IN ACCORDANCE WITH OUR VERBAL ADVICE PLEASE PREPARE THE CHARTER FOR OUR SIGNATURE IMMEDIATELY. AS WE ADVISED VERBALLY, YOU MAY ADD TO THE MOBILTIME DRYDOCKING CLAUSE THE ADDITION PROPOSED BY CHARTERER ON MARCH 22 AND WE AGREE TO PAY COST OF TOVALOP. FURTHER, YOU MAY ADD THE RED SEA AS A DELIVERY RANGE AS PER CHARTERERS EXPRESSED DESIRE ON MARCH 23 AND OUR AGREEMENT ON THAT DATE. THE OSWEGO RELIANCE IS DUE IN THE RED SEA AND/OR THE PERSIAN GULF ON APRIL 1. PLEASE IMPRESS UPON THE CHARTERER THAT WE SHALL PURSUE THIS MATTER VIGOROUSLY AND TO A CONCLUSION AND DO ANY AND ALL THINGS NECESSARY TO PROTECT OUR INTEREST.

"INTEROCEAN SHIPPING COMPANY"

On March 25, 1971, NATIONAL replied by Telex:

"WE HAVE PASSED ON THE CONTENTS OF INTEROCEANS MESSAGE OF MARCH 24, 1971 TO OUR PRINCIPALS AND HAVE BEEN INSTRUCTED TO REPLY AS FOLLOWS:

INTEROCEANS STATEMENTS ARE CLEARLY SELF SERVING, CONTRADICTORY TO THE CONCLUSIONS WHICH THEY PURPORT TO ESTABLISH AND CERTAINLY NOT CONSISTENT WITH ELEMENTARY PRINCIPALS OF CONTRACT LAW. INTEROCEAN ADMITS THAT THERE REMAIN POINTS WHICH WERE NOT AGREED UPON BY THE PARTIES. HELLENIC INTERNATIONAL DID NOT CONSIDER THESE POINTS MINOR. HELLENIC INTERNATIONAL CONSIDERED THESE OUTSTANDING POINTS AS INTEGRAL PARTS OF A PROPOSED AGREEMENT TO WHICH BOTH PARTIES MUST MUTUALLY

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AGREE IN ORDER TO HAVE A CONTRACT. THE SUBSEQUENT ATTEMPTS OF INTEROCEAN TO REVIVE THE NEGOTIATIONS BY OFFERING BELATED UNILATERAL AGREEMENT TO CERTAIN OF THE OUTSTANDING POINTS CERTAINLY ARE NOT CONTRACTUALLY EFFECTIVE. HELLENIC INTERNATIONAL RESPECTFULLY BUT VERY STRENUOUSLY REITERATES THAT THERE WAS NO MUTUAL MEETING OF THE MINDS ON ALL THE TERMS OF THE PROPOSED AGREEMENT, CONSEQUENTLY THERE IS NO CONTRACT. HELLENIC INTERNATIONAL ASSURES INTEROCEAN AND IMPRESSES UPON INTEROCEAN THAT IT IS COMMITTED AND IS READY, WILLING AND ABLE TO MOUNT A VIGOROUS DEFENSE TO PROTECT ITS PROPER INTERESTS.

NATIONAL SHIPPING AND TRADING CORP.
AS AGENT FOR HELLENIC INTERNATIONAL."

A copy of this telex was sent by it to counsel.

On March 24, 1971 Poten & Partners sent the charterparty form to the owners who executed it—but charterer refused to do so.

The formal charterparty form differed from the working copy in the three respects which had been the subject of the post fixture requests by H.T.:

1. To Paragraph 3(a) had been added that delivery could be "or Red Sea at Charterer's option provided no extra deviation involved."
2. Paragraph 11(b) had been added "vessel requires drydocking 4th quarter 1971 for approximately 15 days. Charterers will give owners as much advance notice as possible so as to posi-

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tion vessel in order to coordinate drydocking this period."

3. A new Paragraph 38 had been added: "It is hereby agreed that the owner will register with Tankers Owners Voluntary Agreement concerning liability for Oil Pollution (Tovalop) with all costs pertaining to such to be for Owners account."

This was the charterparty which charterer refused to sign.

Between the date of the fixture and March 24, the tanker market fell drastically from \$5.60 to \$3.00 per ton. The fixture described as "consummated" of the OSWEGO RELIANCE had been published in two shipping publications listing vessels for the trade; this information had not been published at owner's request. One publication was dated March 13, 1971/March 20, 1971 the other, March 12, 1971/March 19, 1971. Respondent did not explain how the information of the fixture came to be reported.

It is clear that, if the fixture letter contained all the necessary elements on which the parties had agreed and if DeSalvo, who signed it, had authority on behalf of both parties, a binding contract came into effect at that time and it was not necessary that the parties execute a formal charterparty to be bound to all its terms including arbitration. *Kulukundis Shipping Co. v. Amtorg Trading Corp.*, 126 F. 2d 978 (C.A. 2, 1942); *Fisser v. International Bank*, 282 F. 2d 231 (C.A. 2, 1960).

DeSalvo was an independent broker, who had done business for many years with H.T. and who, although he

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stood to earn a good commission from the owner, was not employed by it. His testimony, which was consistent and perfectly credible, was supported by his contemporaneous notes, as well as by a sworn statement which had been taken of him by counsel for owners on April 6, 1971 when events were fresh in his mind. I find his testimony that he had been authorized by both parties to close the deal through the fixture letter, after negotiations on all major points had been concluded, substantiated by the evidence and the custom and practice of the shipping business.

DeSalvo's authority to deal on behalf of charterers as well as owners was established from the language of the fixture letter sent to each "for your account"; from the numerous offers and counter offers transmitted through him to each, including the attempted repudiation; from his past business association with H.T. when he had "fixed" ships for National or HELLENIC; from the request of H.T., "bring me a firm offer", as well as from his statement, "You are confirmed". I also find it established by the custom of the trade.

An integral part of the negotiations for the fixture was the letter of guarantee to secure performance of the charter by HELLENIC, a charterer with whom INTEROCEAN had had no prior dealings. This was a prudent condition in light of subsequent events. No limit was placed on DeSalvo's authority in this respect; in fact, he expressly stated in the fixture letter that this was part of the agreement to which H.T. had not only made no objection but had answered that an appropriate guarantee would be given. This is admitted by Respondent. DeSalvo had, in the past on a previous fixture acting for this charterer, procured a guarantee of HELLENIC's performance.

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The commitment to supply the guarantee was but one of the details of the fixture, not unusual in the shipping business. DeSalvo had actual as well as apparent authority to bind the charterer to it. *Christman v. Maristella Compania Naviera*, 349 F. Supp. 845, 851; aff'd 468 F. 2d 620 (1972); *Restatement of the Law of Agency*, 2nd Series, Sec. 34; *Carver, Carriage by Sea*, 12th Ed., Vol. 1, Sec. 335.

I also find that it was the understanding of the parties, through DeSalvo and H.T., that NATIONAL would give the guarantee on behalf of HELLENIC and so bind itself to the charterparty.³ It is true that the fixture letter did not specifically state that the guarantee would be given by NATIONAL, but the testimony is clear that this was the only guarantor which the parties had in mind. The fixture letter did read: "Charterer: Hellenic International Shipping S.A. or Panama, Subsidiary of National Shipping and Trading. With Appropriate Letter of Guarantee." DeSalvo's notes stated that HELLENIC was a subsidiary of NATIONAL. It is uncontradicted that H.T. (who was NATIONAL) agreed to give an appropriate guarantee. The testimony and the record disclose that DeSalvo, who had known H.T. for many years, considered him to be NATIONAL as he was the "owner" and its principal stockholder. H.T.'s father was the principal stockholder of HELLENIC. HELLENIC had no office here,

³ The guarantee was not recited in the charterparty because it was no part of it; the guarantee of performance was really a separate agreement. Discussion on this point is limited to whether NATIONAL should be a party to this suit as surety of the charterparty made by HELLENIC, one of the issues raised by the Court of Appeals. But see *Dover SS Co. v. Summit Industrial Corp.*, 148 F. Supp. 206, holding this to be a question for the arbitrator.

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but all business and correspondence went through NATIONAL's offices and H.T. was HELLENIC's attorney in fact. Although NATIONAL denies that it was the parent of HELLENIC, the fixture letter, DeSalvo's notes, and his sworn statement all describe this relationship. H.T., upon receipt of the fixture letter, did not correct this statement and, in fact, DeSalvo's notes evidence that this information was supplied to him by H.T. H.T. testified:

"I . . . probably did tell Mr. DeSalvo that the charterer would be either National Shipping or Hellenic International".

"I told him the charterer would be National Shipping, implying that we would have authority by another subsidiary company to do so, or Hellenic International."

The Court: "But you didn't say anything about another subsidiary, did you?"

The Witness: "Not to my recollection . . ."

Spears testified, on cross-examination:

"A. It was my understanding that Bethlehem Steel or the owners, I should say, wanted a guarantee of National Shipping & Trading Corporation."

The form of guarantee, which DeSalvo prepared but which was never sent by him to H.T. because, as he testified, it could await the execution of the charter, was similar to one that had been used on a prior charterparty obtained by DeSalvo for HELLENIC, executed by John Theodoracopulos on behalf of HELLENIC, and attached to a letter agreement on letterhead of both HELLENIS and National, signed by H.T. as attorney in fact for HELLENIC,

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who had also signed that prior charterparty on behalf of HELLENIC.

The letter guarantee prepared by DeSalvo was for execution by "Harry Theodoracopulos, National Shipping & Trading Co."

I find that NATIONAL was to be the surety for the performance of HELLENIC and thus liable as a respondent for the non-performance of HELLENIC; this, irrespective of the role it may have played as agent for HELLENIC in negotiating the charterparty. It was in the business of negotiating for its subsidiaries.

I also find that the fixture note represented this understanding by the parties and that it was sufficient to bind NATIONAL to a guarantee through its agent, DeSalvo, even though the formal guarantee was never executed.

Certainly in the modern business world and particularly in the shipping business where speed of negotiations is of the essence (here the OSWEGO RELIANCE was to be delivered on April 1), telecommunications and particularly telexes (used so regularly in the shipping world) are a sufficient "note or memorandum in writing to answer for the default of another." *Christman v. Maristella Compania Naviera*, *supra*; Sec. 5-701, *General Obligations Law*; *Trevor v. Wood*, 36 N.Y. 307 (1867).

"Telegrams and teletype messages, too, are sufficient," says Professor Williston in his *Treatise on Contracts*, 3rd Ed., Sec. 468. The California Court, applying a statute of frauds similar to the New York statute took judicial notice of the extensive use of teletype machines being used among business brokers and found that such a message satisfied the required writing. *Joseph Denunzio Fruit Co. v. Crane*,

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79 F. Supp. 117 (S.D., Cal., 1948), 188 F. 2d 569 (9th Cir., 1949) *cert. den.* 342 U.S. 820.

I find that the telex which contained the clause requiring the guarantee was the contract between the parties; I find that DeSalvo had authority to act for both; and, since DeSalvo signed the telex, I conclude that the guarantee was in writing signed by the agent of the party to be charged, NATIONAL.

The fact that the fixture letter had left the drydocking clause to be worked out does not mean that the parties had not reached a meeting of the minds on this charter.

The testimony of both sides on this point makes it clear that both considered this a point subject to acceptable solution at the proper time. In fact, it was owners who wanted to reach a firm decision on the detail of the drydocking and who suggested the language which was eventually negotiated, and not HELLENIC. It was not until after the principal negotiator, H.T., had gone on vacation and not until the close of business on March 23 that Spears communicated to DeSalvo language he thought they "could live with". The language suggested by Germano was in the working copy of the charterparty form sent both parties, which was received by H.T. on March 22; and, although he requested two changes, he made no comment about the drydocking clause and never suggested any modification of it.

The testimony of DeSalvo was that, in his experience, this was a clause, the details of which could be and often were worked out in the future by the parties; and that the essential facts, such as duration of drydocking and the approximate date, which were important to the trading range, of the vessel had been agreed upon. Petitioner's

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experts, both highly qualified men in the shipping and brokerage business, testified that any deviation in getting the ship to drydock was at owner's expense; in fact, the charterparty so provided here in Paragraph 11(a); that it was not unusual to leave that clause to be worked out at a later time, depending on where the vessel might find herself; and that the clause proposed by owners—Europe or Japan—would not seriously affect the trading range of the OSWEGO RELIANCE since both of these countries were on the route usually plied by oil tankers which traveled Persia Gulf-Europe or Persia Gulf-Japan. It was also their testimony that they had never known of a charterparty to fall apart over drydocking, and that the charterer can arrange his voyage to his profit so that, at about the time the vessel must be in drydock, it is carrying cargo en route.

The testimony of Repondent's expert was to the same effect: that the "custom under the clause would have been for the charterers and owners to discuss some time before November the probable place of drydocking for the charterer to give the owner an idea as to the intended trades so that they would know about where the vessel would be in November."

H.T.'s testimony was that drydocking is worked out "after you know where the ship is going to be about that time", "the place, the exact date is negotiated after the employment of the ship is known." It appears from the testimony that H.T. preferred not to work out a drydocking clause at that time because he testified he could not schedule his ship to be in a certain place eight months hence. Since the choice was his and since the cost was owner's, he was in no hurry to make definite arrangements for drydocking. He also admitted that "sub-details"

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was a common expression in fixtures, and that DeSalvo, on the telephone on March 17 prior to preparing the fixture, had read to him the details of the vessel, etc., as noted in DeSalvo's contemporaneous notes.

Neither Spears nor H.T. had any handwritten notes or diary entries relating to the numerous communications and telephone calls with DeSalvo on this and other business which totalled about 500 calls a year. In fact, H.T. testified that he had made notes about the OSWEGO RELIANCE in a book which contained notes about numerous other matters but that he had thrown them out even though the matter had been referred by him to counsel as early as March 24. H.T. testified that the word "fixed" in DeSalvo's telex meant to him the "conclusion of a negotiation". Spears found the clause relating to drydocking "clear", in fact everything clear except the description of HELLENIC as subsidiary; but made no comment to DeSalvo about this confusion.

I conclude that the drydocking clause was firmly agreed on by the fixture; that it was to the owner's interest to settle it at the time; that, as far as respondent was concerned, he was perfectly content to leave the details to be worked out at a later time depending on where the vessel was; that this was performance which was not to take place for eight months but that the essential terms of the performance had been agreed upon leaving for the future only more precise terms.

In *V'Soske v. Barwich*, 404 F. 2d 495 (C.A. 2, 1968), cert. den. 394 U.S. 921 (1969), the Court held that a contract for the sale of a business was not defeated because the parties had not agreed on the valuation of the net worth of the business to be sold, because the term had an established meaning and could be worked out by the parties.

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"If the contract cannot be performed without settlement of the undetermined point, each party will be bound to agree to a reasonable determination of the unsettled point in order that the main promise may be enforced." *Williston on Contracts*, 3rd Ed., Sec. 48, p. 157.

So long as the undecided matter is not so essential as to frustrate the purpose of the charter, the charter will be enforceable. *Aaby v. States Marine Corp.*, 181 F. 2d 383.

The question of insurance never came up between the parties until charterer attempted to sub-charter the vessel, an act entirely inconsistent with its claim that it never had a charter on the OSWEGO RELIANCE. The evidence relating to Clause 23, which had been deleted from the Mobiltime Form charter in the working copy as well as in the original, was that P & I was totally unnecessary in view of the fact that Bethlehem Steel was a self-insurer in a more than adequate amount to protect charterer. The deletion of Clause 23 was never discussed by the parties; they both knew it was not applicable. Certainly had the charterer not known that insurance was provided by Bethlehem Steel, it would have raised that important point immediately upon receipt of the copy of the charterparty, when it saw that Clause 23 had been deleted. The conclusion is inescapable that HELLENIC and NATIONAL both knew the facts about the insurance carried by Bethlehem Steel. That it had a good reputation for solvency and financial responsibility, was conceded by Respondent's expert.

Tovalop was a different matter. It was not the usual P & I insurance and would never have been discussed but for the fact that NATIONAL or HELLENIC could not sub-charter the OSWEGO RELIANCE without having Tovalop.

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At no time during the conversation with DeSalvo from lunchtime on through that afternoon of March 17, when offers and counter offers on matters were going back and forth through DeSalvo, through the time that DeSalvo sent the fixture, and the following day, March 19, was Tovalop or any insurance ever mentioned. It was only when H.T. authorized DeSalvo to subcharter the OSWEGO RELIANCE for HELLENIC that, for the first time, he requested DeSalvo to seek Tovalop from the owners.

It was not a condition precedent, nor even a condition subsequent, that HELLENIC be able to subcharter the OSWEGO RELIANCE. DeSalvo testified, and this Court agrees, that, even if Bethlehem Steel had refused to obtain Tovalop, he considered that there was a charter on the OSWEGO RELIANCE. The fact that HELLENIC could not profit from a subcharter at that time was of no concern to owners. When owners procured Tovalop and even went so far as to agree to pay for it, they were doing more than the charter required, obviously in the interests of good will which meant good business and undoubtedly also because DeSalvo had intimated that, without Tovalop, HELLENIC would not perform the charter. The subcharter to Chevron, which H.T. authorized DeSalvo to offer on March 18 or 19, coupled with the insistence that owners procure Tovalop, is evidence that HELLENIC considered itself bound under the charter and wanted to profit from it by the subcharter. *Beech Aircraft Corp. v. Flexible Tubing*, 270 F. Supp. 548. Spears testified "we had to conclude the sub-charter." Both experts for Respondent testified that it was not good practice to subcharter a vessel until you have a charter; that it was like selling stock which one does not own. Bethlehem Steel would probably not have requested Tovalop cover-

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age with such urgency and on such short notice unless it considered to have chartered the OSWEGO RELIANCE. It was not only the OSWEGO RELIANCE that it covered, but its entire fleet under the provisions of Tovalop.

The fact that it did add Clause 35 to the charterparty, which was an addition of substance, was had to save a business deal; was done at the insistence of the charterer; and may not be turned around now to attack the fixture for vagueness.

Parties to a contract are always free to make changes or endeavor to make things more comfortable or profitable for each other, without risking attack on the contract as a contract. 1 CORBIN ON CONTRACTS, Sec. 85, 1936 Ed.; 1 WILLISTON ON CONTRACTS, Sec. 79 (1957 Ed.).

The fixture letter contained all the essential terms of the contract which had been orally agreed on. It is binding on all parties. It incorporated the Mobiltime Form charter, which contained the arbitration clause which is binding on all the parties. *Kulukundis Shipping Co. v. Amtorg Trading Corp.*, *supra*; *Dover Steamship Co. v. Summit Industrial Corp.*, *supra*.


The petition to compel arbitration is granted; and the parties are directed to forthwith settle an order designating arbitrators.

Dated: New York, New York
February 28, 1974.

SYLVESTER J. RYAN,
United States District Judge.

**Petitioner's Exhibit 1
(DeSalvo's Notes)**

[PHOTOSTATS]

(Opposite) 

Interoceans Etd.

D. For LD.

4-6-71

Bethlehem Steel
National Shipping & Trading
o/o Overseas Petroleum
only 4:55 today.

- 49283 DWT 39' 5 1/2"
- 16 1/2 knots 100 C
- curly oil on DWT max 3 grades max 135° min
- coiled wire tank only
- cubic 1,968,842 98%

- del 1 safe PB & FA as charter option
- 1st day March 31 / April 15 etc April 1

- rebel 1 safe PB owner option

- WW within IWL & China N. Vietnam, N. Korea, Cuba
Israel & all other communist countries

overtime & portier \$750/mo.

- rate \$5.75/DWT/mo.

suitable drydock clause (scheduled in 15 days)

- 1 year + 15 days.

Still time Mobil time & details

1/4 P&P 1/4 steamship service

- pumping 3 pump 1300 TDPH on 100 psi
- series of performance 6 months
- 1 year + 30 days
- over \$500
- rate \$5.50/DWT/mo.
- Mobil time & clauses 12 a/c, 12 b/c, 12 c/c, 9
- low top cages > 900
- Mobil time sub details
- suitable drydock clause to be worked out with sub. advance notice

Hellenic Int'l Shipping S.A. Partner
sub National Shipping

- 1-1 5.65/DWT/mo. 5.55 5.60 5.60 \$ 1/2
- 750 100 750 750 1/2 st guarantee

- ✓ - prefer line series monthly payment
- drydocking 4th quarter for about 15 days - no agreement per to
 have the boat to be worked out as position approaches.
 work out working

trading - try get OK on Yogo, Belgium, Benin, E. Germany
 3(6)

vessel requires drydocking 4th quarter 1991 for
 approximately 15 days. Charterers will give owners as much
 advance notice as possible as to vessel position in order
 coordinate drydocking during ^{same} ~~other~~ period.

Intention to drydock Spain Portugal or Japan & charterers option
 between Oct 15 / Dec 15. E

Germany - has "lead and" out

- ✓ No trading Yogo etc
- ✓ Red Sea OK provided no extra deviation
- ✓ Towing - (German agreed) It is hereby mutually agreed that since
 charterers requires it ^{the} owner will register the vessel with
 Towing German Voluntary Agreement concerning liability for
 oil pollution (Germany) ^{Germany} with all work pertaining to such
 the in charterers account.

about May 1991. Intention of the owner to stop the vessel at Port Spain, Spain and
 charterers will be left possible to position so that O/P can be accomplished at any time
 before ~~the vessel~~ ^{the vessel} between Oct 15 / Dec 15, 1991.

P-1-2
 x x a

150


| 500 | 750 | 750 | 1st H guarantee

61a

62a

Petitioner's Exhibit 3
("Fixture" Telex Sent to Bethlehem on
March 17, 1971)

[PHOTOSTAT]

(Opposite) 

1 P-3

Inter-Oceans Exh.
A For 1R.

4-6-71 GP \$

Chartering
Oswego Reliance

TAKES	
FSZ	
UDR	REG 11
JOS	ARR 04
CNG	C 1
DNK	
JND	SEP
SFO	
CR	DESTROY

F
BETHLEHEM NYC

POTEN AND PARTNERS INC MAR 17 1971

ATTEN: MR. TONY GERMANO

CONFIRM HAVING FIXED FOR YOUR ACCOUNT TODAY AS FOLLOWS:

OWNER: INTEROCEAN SHIPPING COMPANY
CHARTERER: HELLENIC INTERNATIONAL SHIPPING S.A. OF PANAMA.
SUBSIDIARY OF NATIONAL SHIPPING AND TRADING WITH APPROPRIATE
LETTER OF GUARANTEE.
"OSWEGO RELIANCE"
49,283 DWT 39 FT 5/8 INCHES DRAFT CUBIC 98 PERCENT 1,968,842
3 PUMPS 1300 TWPH EACH
16.5 KNOTS ON 100 BUNKER C PER DAY
DELIVERY/REDELIVERY PG EXCLUDING FAU AND ABADAN
LAYCAN MARCH 31/APRIL 15 1971 ETA APRIL 1, 1971
CRUDE AND/OR DPP MAX 3 GRADES WITHIN NATURAL SEGREGATIONS
MAINTAINING HEATING 135 DEG F
COILED WING TANKS ONLY
TRADING WORLDWIDE WITHIN IWL EXCLUDING COMMUNIST COMMUNIST
CONTROLLED CHINA, NORTH VIETNAM, NOR KOREA CUBA
PERIOD ONE YEAR PLUS OR MINUS 30 DAYS
MOBILTIME EXCLUDING CLAUSES 9, 12AII, 12BII 12BIII
_SUITABLE DRYDOCK CLAUSE TO BE WORKED OUT FOR NOVEMBER DRYDOCKING
_ABOUT 15 DAYS WITH PROPER NOTICES

PERFORMANCE REVIEW EVERY SIX MONTHS
OVERTIME AND PETTIES \$750. PER MONTH

RATE \$5.60 PER DWT PER MO PAYABLE U S DOLLARS IN NEW YORK

_THANK YOU FOR THE OPPORTUNITY TO CONCLUDE THIS BUSINESS

COMMISSION OF 1-1/4% PAYABLE TO POTEN AND PARTNERS INC
_COMMISSION OF 1-1/4% PAYABLE TO STEAMSHIP SERVICE

BETHLEHEM NYC

POTEN PTNRS


P-3

63a

64a

Petitioner's Exhibit 4
(DeSalvo's Statement of April 6, 1971)

[PHOTOSTATS]

(Opposite) 

56

Pet 4

In the Matter of the :
S.S. OSWEGO RELIANCE, dated :
March 17, 1971 :
-between- :
INTEROCEAN SHIPPING COMPANY and :
HELLENIC INTERNATIONAL SHIPPING, :
S.A. :
-----X

STATEMENT of FRANCIS DeSALVO, taken at the
offices of Poten & Partners, Inc., 711 Third Avenue,
New York, New York, on the 6th day of April, 1971,
before Larry Wasserman, a Shorthand Reporter and Notary
Public of the State of New York.

Esquire reporting company, inc.
walter holden, c. s. r.
150 nassau street
new york, n. y. 10038
beekman 3-6388

1

2

2 P R E S E N T :

3 JOSEPH R. KELLEY, JR., ESQ.
4 25 Broadway
New York, New York

5

6

7

* * *

8

9 F R A N C I S E. D e S A L V O, called as a
10 witness, was examined and testified as follows:

11 EXAMINATION BY MR. KELLEY:

12 Q What is your name, please?

13 A Francis E. DeSalvo.

14 Q What is your address?

15 A Harmony Hill, Furnace Dock Road, Peeskill,
16 New York.

17 Q What is your occupation?

18 A Ship broker.

19 Q By whom are you employed?

20 A Poten & Partners, Inc.

21 Q In what capacity are you so employed?

22 A Ship broker.

23 Q Are you an officer --

24 A Yes.

25 Q Or employee?

1

2

A Officer.

3

Q What is your title?

4

A Vice president.

5

Q How many years have you been engaged in the chartering of vessels as a broker or a principal?

6

7

A About seven.

8

Q On March 17, 1971, did you contact Interocean Shipping Company regarding the charter of a vessel?

9

10

Off the record.

11

(Discussion off the record.)

12

A Yes.

13

Q It would be otherwise known to you as Bethlehem Steel, is that correct?

14

15

A That is correct.

16

Q Could you tell us what time of the day you contacted Interocean?

17

18

A I think it was about 3:00, 3:30 in the afternoon.

19

20

Q Do you know whom you spoke to?

21

A I spoke to Mr. Germano.

22

Q Mr. Anthony Germano?

23

A Yes.

24

Q Did you make inquiry of Interocean through Mr. Germano regarding the charter of a vessel?

25

1

2 A On behalf -- I'm going to have to spell this
3 one out. Harry Theodoracopulos who is the principal,
4 I would say, of National Shipping & Trading of New York
5 which Hellenic International Shipping, S.A. is a sub-
6 sidiary.

7

Q Now, Mr. Harry Theodoracopulos, you said, is
8 a principal with the National Shipping --

9

A He is the owner. I don't know what his title
10 is. He owns the company, to my understanding.

11

Q At or about 3:00 or 3:30 P.M. on March 17th,
12 did you speak to Mr. Theodoracopulos?

13

A Theodoracopulos, yes, I did. He asked for
14 a firm offer for the vessel ^{of} ~~of~~ a rate about which I
15 had expressed to him that Interocean was willing to
16 fix as Mr. Germano had advised me.

17

Q In other words, Mr. DeSalvo, before you spoke
18 to Mr. Germano following your first conversation with
19 Mr. Theodoracopulos that day, you had been advised as to
20 the rate Interocean was looking for for the S.S. OSWEGO
21 RELIANCE and by rate, I mean the area that they were
22 thinking about?

23

A That's correct.

24

Q When you had first learned about this area
25 of the particular rate that they were thinking of prior

1

DeSalvo

5

2 to 3:00 or 3:30, you'd asked that with Mr. Theodoracopulos
3 in mind?

4 A No. Just as a general vessel to work on the
5 market.

6 Q This is your custom?

7 A. Within my capacity as a broker.

8 Q This is your custom, to get an idea of the
9 rate or a feeler on the market by speaking to various
10 people from time to time and find out what areas they're
11 looking for regarding rates?

12 A That is correct as far as the charter is
13 concerned.

14 Q You had this knowledge and then Mr.
15 Theodoracopulos contacted you?

16 A That's correct.

17 Q When did he first contact you about getting
18 a vessel?

19 A At lunch the day of the 17th.

20 Q The day of the 17th. At this time, you had
21 in mind and Mr. Theodoracopulos had in mind the S.S.
22 OSWEGO RELIANCE?

23 A No, he asked in general what vessels could be
24 fixed at what was then the going market for one year and
25 I said one that I knew that was there and that was this

1

2 vessel. Then, when he returned to his office after
3 lunch, he called and said, "See if you can bring in a
4 firm offer." Then, it culminated in a phone call to
5 Mr. Germano and getting the offer.

6

Q Do you know the relationship between National
7 Shipping & Trading and Hellenic International Shipping
8 Company?

9

A It's my understanding that Hellenic Inter-
10 national is a wholly-owned subsidiary of National
11 Shipping & Trading.

12

MR. KELLEY: Off the record.

13

(Discussion off the record.)

14

Q Who gave you that understanding or led you
15 to believe that?

16

A Mr. Theodoracopulos and actually in dealings
17 we have had on the same basis previously.

18

Q I'm going to ask you about that luncheon that
19 you had with Mr. Theodoracopulos on March 17th where you
20 discussed the possibility of getting the vessel.

21

Off the record.

22

(Discussion off the record.)

23

Did you discuss anything more than the rate
24 and vessel size?

25

A Well, the general provision of delivery; what

1
2 we thought could happen to rates over the next year or
3 so; whether this was a reasonable business risk to take
4 and to do it now or whether it should be done at a dif-
5 ferent period of time.

6 Q Was there anything else that you can remember?

7 A. No.

8 Q All right. And, that afternoon, you received
9 a call from Mr. Harry Theodoracopulos?

10 A Right.

11 Q Approximately what time?

12 A I'd say this was around 3:00 o'clock or so.
13 It was after our luncheon and he was asking for a firm
14 offer of the vessel, of the OSWEGO RELIANCE.

15 Q Outside of that request that you take a firm
16 offer on the OSWEGO RELIANCE, was there anything else
17 discussed between you and Mr. Theodoracopulos in relation
18 to this proposed charter of this vessel?

19 A Not during that phone conversation. Nothing
20 more than had been discussed at lunch and in general.

21 MR. KELLEY: Off the record.

22 (Discussion off the record.)

23 Q Following that phone call of Mr. Theodoracopulos
24 at around 3:00 P.M. on the afternoon of March 17th, did
25 you contact any other vessel owner?

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DeSalvo

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2 A No.

3 Q Did there come a time when you, in fact, fixed
4 a vessel for Mr. Theodoracopulos or National Shipping &
5 Trading --

6 A That's --

7 Q -- as agent for Hellenic?

8 A That's correct.

9 Q When did you fix this vessel?

10 A I'd say it was around 4:45 or thereabouts on
11 March 17th.

12 Q The vessel you fixed was the S.S. OSWEGO
13 RELIANCE?

14 A That's correct. After several phone calls
15 back and forth of negotiations during the period from --
16 say 3:30 to quarter to five.

17 Q With whom did you fix this vessel?

18 A Mr. Theodoracopulos.

19 Q And who else?

20 A Mr. Germano.

21 MR. KELLEY: Off the record.

22 (Discussion off the record.)


23 Q I'm going back, now, Mr. DeSalvo, to your
24 phone conversation, your first phone conversation that
25 day at about 3:00 or 3:30 that day with Mr. Germano and

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2 I ask you what did you say, to the best of your recol-
3 lection?

4 A I asked him for a firm offer for one year on
5 the OSWEGO RELIANCE for the account of Theodoracopulos
6 and National Shipping & Trading. His reply was that he
7 could not offer the ship firm for a few moments but ~~he~~ 
8 would check to see when the vessel would be free and
9 to get some background on National Shipping & Trading.

10 Q Subsequent to that phone conversation to
11 Mr. Germano, did he call you back?

12 A Yes, he did. About fifteen minutes to a half
13 hour. Somewhere in there.

14 Q Approximately 4:00 P.M.?

15 A I would say that. He gave me a firm offer
16 for reply at 4:45. On the vessel OSWEGO RELIANCE as
17 follows: 49,28 --


18 Q You are referring to your notes, Mr. DeSalvo?

19 A Yes, I am.

20 Q Fine. Does that refresh your recollection,
21 these notes?

22 A Yes.

23 Q Okay. Fine. Please continue.

24 A  49,283 dead weight. Thirty-nine feet five-
25 eighths inch draft. Sixteen and a half knots on hundred

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2 bunker sea per day. - Crew and/or DP maximum three grades
3 within vessels, natural segregation. Maximum maintaining
4 heat of 135 degrees Fahrenheit. Vessel coiled in wing
5 tanks only. Oil cubic capacity, 1,968,842 cubic feet
6 at 98 feet. Delivery, one safe, Persian Gulf. EX-fao
7 abadan at charter is option. Redelivery, one safe,
8 Persian Gulf EX-fao abadan at owner option. Lay days,
9 March 31st, April 15, 1971. ETA, April 1st. Trading
10 worldwide wind, IWL. Excluding China, north of Vietnam,
11 North Korea, Cuba, Israel and all other Communist
12 countries. Overtime and petties. \$750 per month. Hire,
13 \$5.75 per dead weight per month. Suitable drydock
14 clause. Schedule, November, for fifteen days. One year
15 plus or minus fifteen days. Mobile time sub details.
16 Commission, one and a quarter per Poten & Partners. One
17 and a quarter per Steamship Service.

18 Q That is what Mr. Germano told you and that's
19 called the offer?

20 A Firm offer from the owner to the charterer.

21 Q These items that you gave us, what are they
22 called? Are they called particulars?

23 A Particulars and charter party terms and
24 conditions.

25 Q Now, was there any other particular given to

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DeSalvo

11

2 you by Mr. Germano at this time?

3 A No.

4 MR. KELLEY: Off the record.

5 (Discussion off the record.)

6 Q Now, Mr. DeSalvo, after receiving this firm
7 offer from Mr. Germano, what did you do next?

8 A I passed the firm offer on to Mr. Theodoracopulos
9 at which time he gave me a counterproposal.

10 Q Did you pass it along exactly as Mr. Germano
11 gave it to you?

12 A Yes, I did.

13 Q That would be exactly as you gave it to us
14 here today?

15 A Yes, excluding the commission payments which
16 were of no concern to the charterer on -- for the owner's
17 account.

18 Q You say Mr. Theodoracopulos made a counter-
19 proposal?

20 A Yes, he did.

21 Q Could you tell us what that counterproposal
22 was?

23 A He accepted the offer with certain alterations
24 as follows.

25 Q I ask you, again, are you referring to your

1

2 notes, Mr. DeSalvo?

3 A Yes.

4 Q This helps refresh your recollection?

5 A Yes, it does.

6 Q Please continue.

7 A The charterer would be Hellenic International
8 Shipping, S.A. of Panama, subsidiary of National Shipping
9 & Trading Corporation. He asked for the pumping capacity
10 of the vessel. That speed and consumption ^{performance} per-answer
11 be reviewed every six months. The term would be one
12 year plus or minus thirty days. The overtime and petties
13 be \$500 per month. The hire to be \$5.50 per dead weight
14 per month. Mobile ^{time} to exclude clauses 9, 12.(a)(ii),
15 12. (b)(ii), and 12. (b)(iii). Subject to further details.

16 Q By subject to further details --

17 A Subject to further details. There are blanks
18 in mobile ^{time} and such that must be filled in.

19 Q Okay.

20 A Like --

21 Q Continue.

22 A Asked the last two cargoes and suitable dry-
23 dock clauses to be worked out with such advance notice.
24 This was also for reply by 4:55, March 17th.

25 Q When you say reply, do you mean reply by

P-4-12

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DeSalvo

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2 4:55 on March 17th?

3 A That's correct.

4 Q Quoting Mr. Theodoracopulos?

5 A Counterproposal to Mr. Germano's offer.

6 Q Mr. Theodoracopulus put the time limit on the
7 reply and --

8 A 4:55.

9 Q 4:55?

10 A That's correct.

11 Q Were there any other requests from Mr.

12 Theodoracopulos at this time?

13 A No.

14 Q Following this conversation with Mr.

15 Theodoracopulos, what did you do?

16 A I called Mr. Germano and passed down the
17 proposal as just given from Mr. Theodoracopulos.

18 Q Approximately what time did you make this
19 phone call to Mr. Germano?

20 A I would say about twenty after four.

21 Q You passed this along as you just gave it to us?

22 A That's correct.

23 Q You passed this to Mr. Germano. What did Mr.
24 Germano say to you?

25 A He gave me a counterproposal back. By that

1
2 time.--this is not in my notes. This is recollection.
3 He had not been familiar with mobile time but had
4 previously looked at it.

5 Q He meaning Mr. Germano?

6 A Mr. Germano had seen nothing out of line to
7 such an extent that he could not accept the form. He
8 was still reviewing whether the ^{following} twin clauses could be
9 dropped in their entirety. That's 12. (a)(iii),
10 12. (b)(ii) and 12. (b)(iii). Gave me the pumping
11 capacity of the vessel as having three pumps. Thirteen
12 hundred tons water per hour at 100 psi. Stated the last
13 two cargoes were done.

14 Q Dirty petroleum products?

15 A Right. Reiterated his rate of \$750 per month
16 for overtime and petties and offered his hire to \$5.65
17 per dead weight per month. He agreed with the other
18 terms of Mr. Theodoracopulos' counterproposal.

19 Q As set forth by you and this testimony?

20 A Yes.

21 Q Was that all that Mr. Germano said to you at
22 that time?

23 A There was conversation in general as to the
24 rate that we were finally going to end up at but there
25 was nothing considering the terms and conditions.

1
2 Q There was no other subject that was mentioned
3 regarding terms and conditions of this charter?

4 A No.

5 Q Did you, then, go back to Mr. Theodoracopulos?

6 A Yes, I did. Passed this proposal back again.

7 Q This was prior to 4:55?

8 A Yes. I don't have in my notes the exact time
9 for which Mr. Germano gave me this last proposal for
10 reply but I believe it continually stated 4:55 all the
11 way through the negotiations as best as I can recollect.
12 Everything had now been agreed between the parties except
13 the amount of money for overtime and petties.

14 Q As I recall, Mr. Theodoracopulos wanted \$500
15 and Mr. Germano wanted \$750, is that correct?

16 A That's right and the hire where Mr.
17 Theodoracopulos last was at \$5.50 and Mr. Germano at
18 \$5.65.

19 Off the record?

20 MR. KELLEY: Yes.

21 (Discussion off the record.)

22 A Mr. Theodoracopulos made a further counter-
23 proposal of \$600 per month for overtime and petties and
24 \$5.55 per dead weight per month for a charter hire. This
25 was relayed to Mr. Germano who made a counterproposal of

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2 \$5.60 per dead weight per month and continued to insist
3 on \$750 per month for overtime and petties. This was
4 passed to Mr. Theodoracopulos who accepted his proposal
5 resulting in the fixture telexes dated March 17, 1971.

6 Q Okay.

7 Off the record.

8 (Discussion off the record.)

9 A This was sent about 5:30 P.M.

10 Q This is on March 17th?

11 A That's correct.

12 Q Mr. DeSalvo, what is the purpose of sending
13 these telexes? I think you called them fixture telexes?

14 A Just to confirm that these are the terms and
15 conditions that were agreed between the two parties and
16 if there's something that's out of order or what either
17 one of them thought that they --

18 Q This was to avoid misunderstandings, isn't
19 that the very purpose of it?

20 A That's correct.

21 Q You sent a telex to Germano?

22 A That's correct.

23 Q You sent a telex to Mr. --

24 A Theodoracopulos.

25 Q I'm going to hand you this piece of paper, Mr.

8-4-16

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2 DeSalvo and ask you if this is a true copy of the telex
3 you sent to Mr. Germano at about 5:30 P.M. on March 17th
4 confirming the fixture of the S.S. OSWEGO RELIANCE?

5 A Yes, it is.

6 Q You have compared that with your sending copy?

7 A That's correct.

8 Q This is also your office or file copy?

9 A That's --

10 MR. KELLEY: Please mark this as Interocean's
11 Exhibit A.

12 (Interocean's Exhibit A, which was previously
13 described above, was marked for identification.)

14 Q By the way, Mr. DeSalvo, while we're waiting
15 for the other document to be Xeroxed for us, the mobile
16 time to form a charter party is quite common, is that
17 right?

18 A That's right.

19 Q It is well known in the trade?

20 A Yes, it is.

21 Q I note one thing further here. I am talking
22 about in reference to your telex which is Interocean's
23 Exhibit A to the fact that Charterer Hellenic International
24 Shipping, S.A. of Panama, a subsidiary of National Shipping
25 & Trading with appropriate letter of guarantee, is that

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2 correct?

3

4 A That is correct. That was Mr. Germano's
5 request as we were down at the last parts of the
6 negotiations as described previously.

6

MR. KELLEY: Off the record.

7

(Discussion off the record.)

8

9 Q What did that mean to you, that National
10 would guarantee Hellenic's performance?

10

A That is correct.

11

12 Q Did you convey Mr. Germano's request to Mr.
13 Theodoracopulos --

13

A That is correct.

14

Q -- prior to the telex going out?

15

A That's correct.

16

Q Did Mr. Theodoracopulos agree to it?

17

A Yes, he did.

18

19 Q He agreed with the understanding that National
20 would guarantee Hellenic's performance?

20

A That is correct.

21

22 Q Mr. DeSalvo, to go back again to your original
23 point, I have a copy of a telex which is or was purportedly
24 sent by you to Mr. Theodoracopulos on March 17th at about
25 5:30 P.M. I ask you to take a look at this document and
tell me whether or not it is a true copy --

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A Yes.

3

Q -- of the telex that you sent to Mr.

4

Theodoracopulos at that time?

5

A Yes, it is.

6

Q Compare this with your file copy and your

7

sending copy. Is it correct?

8

A Yes, it is.

9

MR. KELLEY: Mr. Reporter, please mark this

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as Interocean's Exhibit B, please.

11

(Interocean's Exhibit B, which was previously

12

described above, was marked for identification.)

13

Q Now, with respect to this question of the

14

guarantee, was the form of the guarantee discussed

15

between you and Mr. Germano or you and Mr. Theodoracopulos?

16

A It was not discussed between myself and Mr.

17

Germano. It was discussed between myself and Mr.

18

Theodoracopulos only to the extent that it should be

19

similar to ones he has done previously under charterers^{5-2X}

20

with which we are familiar.

21

Q Mr. DeSalvo, I hand you what purports to be

22

a draft of the guarantee of Harry Theodoracopulos and

23

ask you if this was the form that you were referring to

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that has been executed by him in the past?

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A Yes, it is.

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Q It was your understanding from your conversation with Mr. Theodoracopulos that this was the form to be signed by him to guarantee the performance of Hellenic for this charter with the S.S. OSWEGO RELIANCE?

A That's my understanding although it was never forwarded.

Q But it was your understanding?

A That's correct.

MR. KELLEY: Mark this as Interocean's Exhibit

C.

(Interocean's Exhibit C, which was previously described above, was marked for identification.)

Q During the course of your testimony, Mr. DeSalvo, you used certain notes to refresh your recollection and I've asked you to make a copy of your notes and I hand you this Xeroxed piece of paper and ask you whether it is an exact copy of your notes which you used to refresh your recollection?

A Yes.

MR. KELLEY: Please mark that as Interocean's Exhibit D.

(Interocean's Exhibit D, which was previously described above, was marked for identification.)

Q At the time of this fixture, was anything left

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DeSalvo

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2 open to be agreed to at some time in the future such as
3 any condition or any term?

4 A No, there were --

5 Q This is referring to the charter.

6 A Two subjects in the --

7 MR. KELLEY: Off the record.

8 (Discussion off the record.)

9 A There were two subjects as outlined in the
10 fixture telexes. One was working out wording to a
11 suitable drydocking clause and the other was sub-details
12 of the mobile ~~time~~ charter party form.

13 Q By details, you mean filling in the blanks?

14 A That's correct.

15 Q What are some of those things that would be
16 covered?

17 A Insurance evaluation. Fuel on board on
18 delivery and redelivery. Vessel free board. Vessel
19 characteristics.

20 Q You are talking about things of that nature?

21 A Things such as that.

22 Q Is it quite common to fix a charter and leave
23 the details to be filled in sometime later?

24 A Yes, it is.

-21
25 Q With respect to the drydocking clause, is it

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DeSalvo

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2 common practice to fix a vessel leaving open the suitable
3 drydocking clause?

4 A Normally, in a fixture of one year, the question
5 of drydocking -- usually the vessel will have drydocked
6 before it came on charter. However, in this instance,
7 specific reference was made during the negotiations to
8 be other wise so that there were changes that had been
9 made in the charter party form to reflect that.

10 Q Is there anything unusual about that under
11 these circumstances to have it --

12 A No.

13 MR. KELLEY: Off the record.

14 (Discussion off the record.)

15 Q I see on the drydocking reference during the
16 negotiations that it was agreed to that there would be a
17 November drydocking that was to last about fifteen days.

18 A No, with proper notices to be given -- yes, by
19 -- excuse me. Proper notices to be given by the charterer
20 as to the position and also proper notices to be given
21 by the owner as to when they wanted to undertake -- to
22 be worked out as to when it would be best suited for both
23 parties.

24 Q These are the only two areas left open?

25 A That is correct.

P-4-22

1 MR. KELLEY: Off the record.

2 (Discussion off the record.)

3 Q In the custom and usage of the broker's field,
4 would these two items that were left open be considered minor
5 items or major items?

6 A Minor items.

7 Q Elaborate, please.

8 A Drydocking clause had been ^{to a major extent?} ~~a major portion~~ agreed
9 as to the timing of it ^{on 12/20} for what duration. It was to be worked
10 out later as to the wording that satisfied both parties as to
11 what notices had to be given to effect it as best to both
12 parties. ^Q Sub-details of the charter party as noted earlier are
13 basically filling in blanks of vessel details and specifica-
14 tions.

15 Q Did you hear anything more from either side on
16 March 17th regarding the sending of telexes?

17 A No, I did not.

18 Q Did you hear from Mr. Germano on the morning of
19 the 18th with regard to this proposed drydock clause?

20 A Yes, I did.

21 Q Did Mr. Germano work with you on the morning of
22 the 18th with respect to filling in details of the mobile
23 time form of charter party?

24 A Yes, he did.

25 Q Did there come a time on the 18th that you offered

1 the S.S.OSWEGO RELIANCE out to an oil company on behalf of
2 Mr. Harry Theodoracoupulos and National --

3 A We attempted to do so.

4 Q -- and Hellenic?

5 A We attempted to do so but the --

6 Q By attempt, do you mean you made a phone call?

7 A We said we can get such a vessel as described.

8 OSWEGO RELIANCE for your firm for such -- for a trade in this
9 case, PG South Africa.

10 Q To whom did you make this attempted offer?

11 A Chevron Shipping Company.

12 Q Who in Chevron?

13 A The gentleman that did the chartering. Either Bruce
14 Debaun or Larry ~~Tompson~~ ^{A. J.} Tompson. I personally did not talk to those
15 people. I'm not sure which one of the two.

16 Q This was during the morning of the 18th?

17 A It would probably be more around noontime since--
18 don't open until 11:00 o'clock our time.

19 Q Before attempting to offer the vessel to Chevron,
20 did you speak to Mr. Theodoracoupulos on the morning of the
21 18th and obtain his authority to put the ship out for charter?

22 A Yes.

23 Q You use the word attempted. What do you mean by that?

24 A They would not accept an offer of a vessel that
25 was not a member of TCVALOP.

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Q You use the word attempted. What do you mean by that?

A We wished to give an offer to Chevron of the vessel and they asked the question as to whether the vessel was a member of TOVALOP.

Q How did you respond to that?

A We responded that we did not know.

Q Did you call Mr. Germano then?

A Yes, I did.

Q What did you find out?

A I found out that the vessel was not a member of TOVALOP as were none of the vessels from Bethlehem's fleet.

Q Can you recall what you said to Mr. Germano at that time in addition to the basic question of, was the vessel a member of TOVALOP?

A I recall saying that this was going to make things rather difficult as several charterers today were starting to demand this and that I thought Mr. Theodoracopulos would have a problem with various contracts that he had of putting this vessel under them due to this fact.

Q Now, was this the first time that TOVALOP came up during this period, March 17th to the day or

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2 midday of March 18th?

3 A That's correct.

4 Q In other words, the question of TOVALOP never
5 came up prior to the fixture, is that correct?

6 A That's correct.

7 Q Did Mr. Germano respond to you then?

8 A He said he would discuss it with his insurance
9 people but that as a matter of policy, the company had
10 decided in the past that they were self-insured and
11 so their own coverage was more than sufficient and had
12 previously made the policy of not joining TOVALOP because
13 -- not due to the dues involved but the fact of the
14 additional calls that could come up.

15 Q During the course of this day, this is March
16 18th, did you discuss TOVALOP with Harry Theodoracopulos?

17 A Yes, we did.

18 Q What time was this?

19 A Subsequent to trying to make this proposal
20 to Chevron which we could not.

21 Q And subsequent to your conversation with Mr.
22 Germano?

23 A With Mr. Germano. I discussed with Mr.
24 Theodoracopulos why, presently, the vessel wasn't
25 acceptable to Chevron and try to clarify that question

1
2 with owners of OSWEGO RELIANCE.

3 Q By clarify, do you mean the terms in regard
4 to TOVALOP and entering --

5 A We had determined it was not but it would be
6 put in.

7 Q What was Mr. Harry Theodoracopulos' response
8 to your call to him?

9 A That the vessel would almost have to be a
10 member of TOVALOP in order for it to be usable to him
11 and we should impress this upon the owners.

12 Q Did you then call Mr. Germano?

13 A Yes, I did. Reiterated again what I said
14 earlier that several of our charterers at that time and
15 I believe I named not only Socal but Atlantic and Mobil
16 were required that you be a member of TOVALOP and several
17 others were considering the same action and as I -- as I
18 recall, in the same conversation, although it may have
19 been the next day and I'm not exactly clear. Mr. Germano
20 mentioned to me that under a fixture that they had with
21 Texaco, they were running into the same question. However,
22 vessels they had on one, Conoco and Texaco, this had not
23 been a question previously.

24 MR. KELLEY: Off the record.

25 (Discussion off the record.)

2 Q During your phone conversations regarding
3 TOVALOP on the afternoon of March 18th, did Mr. Germano
4 indicate to you that he was going to meet internally with
5 his people and that he would recommend that InterOcean
6 join TOVALOP?

7 A. During our conversations, whether it was the
8 18th or not, on this question or not, he stated that they
9 were going to have an internal meeting and I believe it
10 was to be the following morning, as I recall, to discuss
11 joining, for the whole fleet, but there were several
12 questions to be resolved and some of which had to come
13 from your insurance people. He mentioned to me that he
14 and Mr. Reese were going to recommend joining TOVALOP.
15 I do not recall when that was. I don't remember if that
16 was the afternoon of the 18th or during the morning of
17 the 19th that he told me that.

18 Q Mr. DeSalvo, on the 18th, before you offered
19 the vessel out to Chevron, did you take Mr. Germano's
20 proposed drydocking clause and discuss it with Mr.
21 Harry Theodoracopulos?

22 A I don't recall the exact sequence of what
23 happened then on the 18th. Prior to offering the ship
24 to Socal, attempting to offer the ship to Socal, Mr.
25 Germano and I began to work on the details of the charter

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2 party including the drydocking clause in order to make
3 up the pro forma which was subsequently sent out on the
4 19th. I don't recall whether I got an actual drydocking
5 clause wording before we went to offer the ship or during
6 the time we were trying to offer the ship or exactly the
7 sequence of events.

8 Q In any event, the ship was offered to Chevron
9 before the wording, ^{of the} drydock clause, was agreed to by both
10 parties and before the details, the filling in of the
11 blanks of the Mobile ^{time} charter were completed?

12 A That's correct.

13 Q Now, subsequent to what you told us about Mr.
14 Germano and Mr. Reese telling you that they're going to
15 recommend that Interocean join TOVALOP, did you hear any
16 more about TOVALOP from Mr. Germano?

17 A We discussed, to my understanding, of what
18 it took to join TOVALOP and Mr. Germano explained what
19 his understanding was but that he's -- there were things
20 that were to be checked ^{by the} mechanics of TOVALOP to
21 be checked by the insurance people.

22 Q You are not sure that this was on the morning
23 of the 19th or the afternoon of the 18th?

24 A No, I'm not. We also discussed, in continuity
25 I would say, during the conversations how this was becoming

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2 a problem and particularly HUZ charterers and seemed to
3 be a growing problem and I explained in my feeling, to
4 Mr. Germano, that whether it was this ship or others,
5 he was going to have to join which he concurred with.

6 Q By that, you meant that he would eventually
7 join? .

8 A Eventually. I explained to him that he
9 eventually was coming very close --

10 Q Yes.

11 A That during that week it seemed to be coming
12 to a head.

13 MR. KELLEY: Off the record.

14 (Discussion off the record.)

15 Q During these discussions of TOVALOP on the
16 18th and 19th, were you doing anything else with relation
17 to this fixture?

18 A Yes, we were continuing to work out a pro
19 forma charter party incorporating a suitable drydocking
20 clause and the sub-details of the Mobile time form.

21 Q Did you have InterOcean's drydocking clause
22 on the 18th?

23 A I do not recall whether we got it during the
24 18th or early 19th but at that time or just in time to
25 type up the pro forma charter party which was sent out

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2 on the 19th along with other details. Some we got ^{at} and
3 one time some ^{we got} a little later during the day.

4 Q Did you hear from Mr. Germano on the 19th
5 which was a Friday?

6 A Yes, I did.

7 Q Did you hear from Mr. Germano regarding
8 TOVALOP?

9 A Yes, I did.

10 Q Did he tell you that there had been a meeting,
11 an internal meeting regarding this question and that a
12 final answer would have to await confirmation of certain
13 details of TOVALOP London?

14 A That is correct. He told me that they had met.
15 That they were going to join or looked like they were
16 going to join. I said, "May I tell Mr. Theodoracopulos?"
17 And he said, "Not yet."

18 We recommended that the insurance people have
19 to check it out through London.

20 MR. KELLEY: Off the record.

21 (Discussion off the record.)

22 Q Did he also tell you this could not be done ^{until}
23 Monday due to the time element between New York and
24 London?

4-31 25 A That's correct.

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Q At that time London offices were closed down for the weekend?

A That's right.

Q Did you hear from Mr. Germano on Monday?

A Yes.

Q That would be the 22nd?

A That's correct.

Q Did Mr. Germano call you on Monday, March 22nd and inform you that Interocean had agreed to join TOVALOP and was going to make an application that day by cable?

A I don't recall whether he called me or I called him or how it happened but during that day, yes, he told me they were going to join.

Q Now, did you pass this information on to Mr. Theodoracopulos that day?

A Yes, I did.

Q Did he say anything to you in response to that information?

A Off the record?

MR. KELLEY: Yes.

(Discussion off the record.)

A No.

Q But, in any event, Mr. Harry Theodoracopulos

1 had that information on Monday, March 22nd?

2 A That's correct.

3 Q Did you speak to or hear from Mr. Germano
4 on Tuesday, March 23rd with respect to TOVALOP?

5 A Yes, I did.

6 Q Did he tell you that Interocean had received
7 confirmation from London that they were actually a member
8 of TOVALOP?

9 A That's correct.

10 Q Did you pass this information on to Mr.
11 Harry Theodoracopulos?

12 A Yes, I did.

13 Q Do you know what the approximate time was that
14 you passed this on to him?

15 A It would have to be in the morning because
16 he left by noontime to go on vacation.

17 MR. KELLEY: Off the record.

18 (Discussion off the record.)

19 Q On that same day, March 23rd, did Mr. Germano
20 give you a proposed clause regarding TOVALOP to put into
21 time charter?

22 A Yes, he did.

23 Q Do you have that proposed clause before you?

24 A Yes, I do.

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2 Q Could you read it to us, please.

3 A "It is hereby mutually agreed, since charterer
4 requires it, the owner will register the vessel with
5 tanker owners, Voluntary Agreement concerning liability
6 for oil pollution (TOVALOP) with all costs pertaining
7 to such to be for charterer's account."

8 Q Did you pass that clause along to Mr. Harry
9 Theodoracopulos?

10 A Yes, I did.

11 Q This is, again, on Tuesday, the morning of
12 the 23rd?

13 A That's correct.

14 Q Did Mr. Theodoracopulos give you a response
15 to that clause?

16 A Yes, he did.

17 Q That same time?

18 A Yes.

19 Q What was his response?

20 A That the cost should not be for his account.

21 Q Did you relay that information back to Mr.
22 Germano?

23 A Yes, I did.

24 Q What happened then?

25 A Mr. Germano explained to me that he felt that

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2 it was -- this clause was fair as Texaco had agreed to
3 similar wording.

4 Q This happened on Tuesday, the morning before
5 Mr. Theodoracopulos left town?

6 A That's correct.

7 Q What happened next with respect to TOVALOP *only*

8 A Well, this question was continually argued in
9 the same fashion by both parties until such time as --

10 Q Did you relay back to Mr. Theodoracopulos,
11 Mr. Germano's remark that he thought it was unfair to
12 have Interocean pay?

13 A Yes, I did.

14 Q Did Mr. Theodoracopulos respond to that in *any*
15 way?

16 A Just to the effect that he felt that it was
17 not a part of this charter party problem and that he
18 felt it was an unreasonable request on owner's part.

19 Q Did he indicate anything in the way of counter-
20 offer or --

21 A No.

22 Q He stood fast?

23 A He stood fast. He said that it was for owner
24 account.

25 Q This is still on the morning of the 22nd?

2 A That's correct, and after Mr. Theodoracopoulos
3 left, the same position was upheld by Mr. Spears.

4 Q This conversation took place the rest of the
5 day on Tuesday, on and off?

6 A That's correct.

7 Q You don't recall, exactly, all the conversations?

8 A There were at least four or five back and forth
9 and not only on this question but other questions.

10 Q The drydocking question was still in issue at
11 this time?

12 A That's correct.

13 Q Just to divert for a moment. Did you get a
14 response to Germano's drydocking clause on the 18th?

15 A Yes, I did. The drydocking clause had been
16 put in a pro forma which was sent to both parties on the
17 19th.

18 Q When did you first hear from the charterer
19 regarding the drydocking clause?

20 A I believe Monday.

21 Q The 22nd?

22 A 22nd.

23 Q Now, on the 22nd and 23rd, both the TOVALOP and
24 the drydocking clause were being discussed actively between
25 the two parties?

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A That's correct.

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Q When were you advised that Interocean was a member of TOVALOP?

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A On Tuesday morning, March 23rd.

Q The 23rd?

A Yes.

Q And all those discussions that you had with Mr. Theodoracopulos regarding the payment clause on the 23rd, they all took place on the 23rd?

A That's correct.

Q And it was not the 22nd?

A That's correct.

Q Mr. Theodoracopulos left town on the 23rd, is that correct?

A During the day of the 23rd.

Q The 23rd.

After he left town, then the matter was taken up with Mr. --

A Spears.

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DeSalvo

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2 Q -- Spears. During the 23rd and while the
3 question of who was going to pay the cost of TOVALOP,
4 drydocking was an issue and it was being discussed at
5 the same time, is that correct?

6 A That's correct.

7 Off the record?

8 MR. KELLEY: Yes.

9 (Discussion off the record.)

10 Q Drydocking had been discussed on Monday, too?

11 A That's correct.

12 Q Did you call Mr. Germano at or about 4:50 P.M.
13 on the 23rd and advise him that if InterOcean insisted
14 upon charterer paying TOVALOP's dues, charterer might
15 cancel the charter?

16 A I don't recall the timing of the phone call.
17 I don't recall saying that if they -- if owners insisted
18 on charterers paying that charterers may cancel. To back-
19 track a little, Mr. Germano, at that time, merely asked
20 what kind of drydocking clause the charterers wanted. Let
21 me propose a wording that he could put before his people
22 rather than constantly turning down his wording. They had
23 indicated that they would do so. At that time, we had
24 sort of dropped the TOVALOP question to try and get the
25 drydocking clause ironed out and then say that all we have

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DeSalvo

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2 left is TOVALOP which is just a question of who bears
3 the cost and we will try to get everything else in order
4 and the --

5 Q By both parties?

6 A That's correct.

7 Q This was on the afternoon of the 23rd?

8 A That's correct.

9 Q In effect, on the afternoon of the 23rd, both
10 parties decided to put in abeyance, for the time being,
11 the question about who was going to pay the costs of
12 TOVALOP and work out the drydocking clause first?

13 A I don't -- I can't say that they put it in
14 abeyance by mutually putting it in abeyance.

15 Q They worked out this --

16 A Ipso facto.

17 Q Worked out that way?

18 A That's correct.

19 Q Worked out that way by both sides' actions?

20 A That's correct.

21 Q Up to the afternoon of the 23rd, had charterer
22 given a counterproposal for drydocking clause or had they
23 simply rejected each of Germano's drydocking clauses up
24 to that point?

25 A They had verbalized what would be acceptable

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DeSalvo

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2 to them without a word-by-word clause. They had said
3 what was unacceptable to them than what was acceptable.

4 MR. KELLEY: Off the record.

5 (Discussion off the record.)

6 Q Mr. DeSalvo, it's my understanding that on the
7 afternoon of the 23rd, charterer did not insist that owner
8 pay the cost of TOVALOP under threat of breaking the charter
9 is that correct?

10 A That's correct.

11 Q What I referred to above was really the thought
12 that you were conveying? You were conveying your personal
13 thoughts to Mr. Germano that the charterer might break the
14 charter party if owner did not agree to pick up the cost
15 of TOVALOP?

16 A Off the record?

17 MR. KELLEY: Off the record.

18 (Discussion off the record.)

19 A This is correct. It was my feeling that we
20 would have difficulty getting charter party together if
21 owners continued to insist that the cost to TOVALOP would
22 be for charterer's account.

23 Q Now, is it correct to say that on March 23rd
24 there was no form of ultimatum given by the charterer to
25 the owner regarding TOVALOP costs?

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2 A That's correct.

3 Q There was never an ultimatum prior to March
4 23rd?

5 A That's correct.

6 Q Now, on the evening of March 23rd, did you
7 receive a phone call from charterer and specifically, Mr.
8 Spears, with respect to a proposed new drydocking clause?

9 A Yes, I did.

10 Q Did Mr. Spears give you a clause?

11 A Yes, he did.

12 Q Could you tell us what that clause said?

13 A As an addition to clause 11-B after "had
14 occurred" -- off the record.

15 (Discussion off the record.)

16 Q -- add "About November, 1971, charterers will
17 do all possible to position the vessel for discharge in
18 the UKC Med or Far East areas so ^{that} drydocking can be ac-
19 complished between October 15th and December 15, 1971."
20 Now, that matter in quotes is the exact language that Mr.
21 Spears gave you, is that correct?

22 A As best reflected by my notes, that's the
23 exact wording.

24 Q Did Mr. Spears, at that time and this is the
25 evening of March 23rd, advise you to relay that to Mr.

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2 Germano?

3 A Yes, he did.

4 Q What time had you received this drydocking
5 clause from Mr. Spears?6 A Definitely after 5:00 o'clock, and as best I
7 recall, 5:10 to 5:20.

8 Q You tried to reach Mr. Germano?

9 A Yes, I did.

10 Q Did you have any success?

11 A No, no one was there.

12 Q He had left for the day, is that correct?

13 A No one answered the switchboard number so --

14 Q Okay. Did Mr. Spears indicate to you a time
15 limit for a counterproposal for responses to proposals
16 for the drydocking clause?

17 A No, he did not.

18 Q Did he indicate to you any urgency with respect
19 to the drydocking clause?

20 A No.

21 Q Did he indicate to you during the day of March
22 23rd any urgency with respect to TOVALOP?

23 A No.

24 Q On the morning of March 24th, did you again
25 hear from Mr. Spears?

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DeSalvo

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2 A Yes, I did.

3 Q Approximately what time?

4 A Shortly after 9:00 o'clock. Between 9:00,
5 9:15.

6 Q What did he say to you and what did you say
7 to him?

8 A He asked if I had passed these drydocking
9 clauses on to the owners. I said "No, I had not." He
10 said "Do not." And that he would revert.

11 Q By revert, what do I take that to mean?

12 A He would come back to me in a few minutes
13 with something else which he subsequently came back and
14 asked me to advise owners, since no agreement had been
15 reached that negotiations were terminated.

16 Q What time was this last conversation regarding
17 termination of negotiations?

18 A As best I recall, about 9:30. He subsequently
19 sent a telex to the same effect.

20 Q Mr. DeSalvo, is Mr. Spears an employee of
21 National Shipping & Trading?

22 A Yes, to my understanding, he's president of
23 National Shipping & Trading.

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DeSalvo

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MR. KELLEY: Thank you. That's all.

(Time noted 5:00 o'clock P.M.)

[Signature]

Subscribed and sworn to before me
this *14th* day of *May* 1971

Francis J. Cuzzi

FRANCIS J. CUZZI
NOTARY PUBLIC, STATE OF NEW YORK
No. 60-0838500 Qualified in Westchester County
Cert. filed in New York County
Commission Expires March 30, 1973


P-4-47

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Petitioner's Exhibit 7
(Draft of Guarantee)

[PHOTOSTAT]

(Opposite) 

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Pet 7

Interoceans Exh.
C For I.P.
RW 46-71

DRAFT

of

DATE _____

GUARANTY OF HARRY THEODORACOPULOS

Reference charter party dated March 17th, 1971, between HELLENIC INTERNATIONAL SHIPPING, S.A. OF PANAMA, and INTEROCEAN SHIPPING COMPANY, Owners of the "OSWEGO RELIANCE" subject to terms and conditions of above mentioned charter party, I hereby guaranty the performance of HELLENIC INTERNATIONAL SHIPPING S.A.

Harry Theodoracopulos
National Shipping & Trading Corp.


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Respondent's Exhibit A
(Extract from Handy Book for Ship Masters—
Oil Pollution)

[PHOTOSTAT]

(Opposite) 

TOVALOP AND CRISTAL

The Tanker Owners' Voluntary Agreement concerning Oil Pollution (TOVALOP) is a scheme initiated by the major Oil Companies. It takes effect as an Agreement between participating tanker Owners to reimburse National Governments for expenses reasonably incurred by them to prevent or clean-up pollution of coast lines as a result of the negligent discharge of oil from a participating tanker, but subject to a maximum of \$100 per g.r.t. or \$10 million, whichever is the less. Under the Agreement a participating Owner is bound to establish and maintain his financial capability to fulfill his obligations under the Agreement. TOVALOP also contains provisions to encourage a participating Owner to take reasonable measures to prevent potential damage by pollution and to mitigate damage by pollution from a discharge of oil. The Clubs have made arrangements whereby a member who has signed this Agreement can be covered for his liabilities thereunder by his own Club. This is of particular importance since most oil Companies will not charter a tanker unless the Owner is a party to TOVALOP.

Some of the major Oil Companies have also introduced so-called TOVALOP Clauses into charter parties, entitling them to undertake clean-up operations at Owners' expense. Most of these Clauses have been approved by the Clubs, subject to a provision that the Oil Companies must give prompt notice of any such measures taken or intended to be taken and that the Owners should have an absolute discretion to order the discontinuance of any operations under these Clauses. Members' attention is drawn to the Rules which provide that immediate notice must be given to the Club of any information liable to give rise to a claim on the Association. This is of importance since otherwise, having regard to the limited oil pollution cover available, a Member may in certain circumstances incur liabilities in excess of his insurance limits.

CRISTAL is an inter-Oil Company Agreement whereby the Oil Companies concerned will, subject to certain conditions, increase to \$30 million any compensation available to victims of oil pollution damage.

Resp'n Ex. A.




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Respondent's Exhibit B
(Extract from 1971 Rules U. K. Club)

[PHOTOSTATS]

(Opposite) 

1971 RULES

**The United Kingdom Mutual Steam Ship
Assurance Association (Bermuda) Limited
PROTECTING AND INDEMNITY CLUB**

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LIST OF CORRESPONDENTS page 25

MANAGERS

THOS R. MILLER & SON (BERMUDA)

MERCURY HOUSE
FRONT STREET
P.O. BOX 665
HAMILTON
BERMUDA

TELEPHONE HAMILTON 24724
TELEX BERMUDA 317
CABLES & TELEGRAMS MUTUALITY BERMUDA

LONDON AGENTS

THOS R. MILLER & SON

14-20 ST MARY AXE
London EC3A 8DA

TELEPHONE 01-283 4646
TELEX 888142
CABLES & TELEGRAMS MUTUALITY LONDON

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* * *

* * *

RISKS COVERED

34 The liabilities, costs and expenses in respect whereof Owners shall be insured by the Association in respect of their interest in the entered ship are limited to the following and are subject to the deductibles set out immediately following paragraph (34) of this Rule:—

DAMAGES OR COMPENSATION FOR LOSS OF LIFE OF OR PERSONAL INJURY TO OR ILLNESS OF:—

(1) Any person in or on board or near an entered ship, including hospital, medical or funeral expenses, for which an Owner may in consequence be liable, arising out of the negligent navigation or management of the entered ship or other negligent act or omission on board of or in relation to the entered ship, or for which an Owner may be liable under the terms of an indemnity given by him to the owners or operators (including Port or Dock Authorities) of any dock or drydock;

PROVIDED ALWAYS that:—

The terms of the indemnity shall have been approved by the Managers and that the Directors shall have power at any time to prohibit any such indemnity or form of indemnity for use at any particular port or place.

(2) Any Master or Seaman or other person carried in an entered ship or any member of the crew of an entered ship (or any substitute for or replacement of a member of the crew of an entered ship) who is proceeding to or from such ship, for which the Owner may be liable under Compensation Acts or similar enactments, decrees or regulations or under the National Maritime Board Agreements or similar Collective or Special Agreements approved by the Directors;

(3) Any person arising in relation to the handling of the cargo of an entered ship or in consequence of the negligence of persons employed solely for that purpose, from the time of receipt for shipment on quay or wharf until final delivery ex quay or wharf at the port of discharge, for which the Owner may be liable, notwithstanding that the Owner's liability for the same arises under a contract or indemnity between the Owner and his stevedores or other sub-contractor;

PROVIDED ALWAYS that:—

The Directors shall have power at any time to prohibit any contract of indemnity or form of contract of indemnity for use at any particular port or place or in any particular trade;

(4) Any person in or on board any other ship or vessel caused by the negligent navigation or management of an entered ship or other negligent act or omission on board of or in relation to an entered ship.

EXPENSES INCURRED UNDER STATUTE OR COLLECTIVE OR SPECIAL AGREEMENTS IN RESPECT OF LOSS OF LIFE, PERSONAL INJURY OR ILLNESS

(5) Hospital, medical and funeral expenses incurred under statutory obligation or in accordance with any Collective or Special Agreement approved by the Directors in consequence of loss of life of, or personal injury to or illness of, any Master or Seaman on board an entered ship, or any member of the crew of an entered ship (or any substitute for or replacement of a member of the crew of an entered ship) who is proceeding to or from such ship, including expenses incurred in consequence of any Master or Seaman being by reason of injury or illness temporarily removed from an entered ship.

Such expenses, including the expense of repatriation in consequence of illness, incurred in respect of the Master of an entered ship without statutory obligation or Collective or Special Agreement shall be recoverable if the Directors

determine that such expenses should not, having regard to all the circumstances of the case, be borne by or charged against the Master.

REPATRIATION

(6) Repatriation Expenses incurred under statutory obligation in respect of any member of the crew of an entered ship, or any Master or Seaman who is proceeding to or from such ship;

PROVIDED ALWAYS that:—

(a) No such expenses shall be recoverable if they arise out of or ensue upon the termination of any agreement either in accordance with the terms thereof or by mutual consent, or the sale of the entered ship, or any other act of the Owner in respect of the entered ship.

(b) Wages shall only be recoverable as part of such expenses when payable either:—

(i) during unemployment in consequence of the loss or wreck of an entered ship, but including payments made to Seamen in consequence of such loss or wreck, under the English Merchant Shipping (International Conventions) Act, 1925 or any similar enactments, decrees or regulations relating to unemployment indemnity for Seamen after the loss or wreck of their ship, made in pursuance of the Draft Convention adopted by the General Conference of the International Labour Organisation of the League of Nations at Geneva on the 9th July, 1920 or made in pursuance of similar statutory obligations or made in pursuance of any Collective or Special Agreement approved by the Directors; or

(ii) during medical or hospital treatment abroad, or during repatriation consequent upon injury or illness, under statutory obligation, or under the National Maritime Board Agreements or similar Collective or Special Agreements approved by the Directors.

CREW SUBSTITUTE EXPENSES

(7) Expenses necessarily incurred in sending abroad substitutes, or in securing, engaging, repatriating or deporting a substitute engaged abroad, to replace any Master or Seaman on board an entered ship who shall have died, or who shall have been left ashore in consequence of injury, illness, desertion or in any other case in which the Directors shall determine that such expenses were reasonably incurred;

PROVIDED ALWAYS that:—

(a) No such expenses shall be recoverable if they arise out of or ensue upon the termination of any

agreement either in accordance with the terms thereof or by mutual consent, or the breach by the Owner of any of the statutory or contractual obligations, or of the terms or conditions of any collective agreement, and

(b) Wages shall only be recoverable as part of such expenses when payable to substitutes, engaged abroad, while awaiting and during repatriation.

LOSS OF EFFECTS

(8) Payments made to Masters and Seamen in respect of the loss of their effects by marine perils under the National Maritime Board Agreements or similar Agreements approved by the Directors or under statutory obligation.

DISTRESSED SEAMEN'S EXPENSES

(9) Expenses incurred by or chargeable to an Owner under statutory obligations for the relief of distressed seamen, which are not recoverable under any of the preceding Rules.

PORT AND DEVIATION EXPENSES

(10) Port and other charges solely incurred for the purpose of landing or disposing of stowaways or landing or securing the necessary treatment for an injured or sick person being carried in an entered ship including the net loss to Owners in respect of fuel, insurance, wages, stores and provisions incurred for such purpose or while awaiting a substitute for such person.

LIFE SALVAGE

(11) Life Salvage shall be recoverable to the extent only that the same is not recoverable from Hull Underwriters on the entered ship or from Cargo Owners or Underwriters.

COLLISION LIABILITY

(12) One-fourth of an Owner's liability, with costs incidental thereto, for damage done by collision with any other ship or vessel including the one-fourth liability which is not covered under the usual Lloyd's Policy on Hull and Machinery with Running Down Clause attached and which may not be covered under other forms of Hull Policy approved by the Managers; if the Hull Policies exclude a less fraction than one-fourth, the fraction so excluded: Provided that such liability, costs and expenses are not in fact recoverable under the Hull Policies on the entered ship.

(13) Collision liability, with costs and expenses incidental thereto, to the extent that such liability, costs and expenses are not recoverable under paragraph (12) of this Rule or under the Hull Policies.

PROVIDED ALWAYS that in relation to paragraphs (12) and (13) of this Rule:—

(a) The Directors may for the purpose of assessing any sum recoverable under paragraph (13) of this Rule determine the proper value at which the entered ship should have been insured under the Hull Policies, and the Association shall pay only the excess (if any) of the amount which would have been recoverable under the Hull Policies if the entered ship had been insured thereunder at such value;

(b) The Managers may prior to the commencement of any policy year determine what, if any, additional contribution shall be paid by any Owner whose ship is entered in the Association upon the terms that he shall be protected under paragraph (13) of this Rule against the excess of the amount recoverable under the Hull Policies; and in this event the recovery from the Association of those Owners who have not paid such additional contribution shall be limited to the amount under paragraph (12) of this Rule;

(c) The Managers shall have power, but shall not be bound, at the request of an Owner to agree for the purpose of paragraph (13) of this Rule the proper value at which an entered ship should be insured for the current policy year;

(d) Unless otherwise agreed at the time of entry, an Owner shall not be entitled to recover from the Association any excess, franchise or deductible borne by him under the Hull Policies;

(e) The excess shall however be recoverable in full from the Association if, but to the extent only to which, it represents the legal liability of the Owner to pay or to indemnify the Owner of another ship against:—

(i) the costs, charges and expenses of or incidental to the raising, removal, destruction, lighting or marking of the wreck of such other ship; or

(ii) damage done by such other ship to any Harbour, Dock, Pier, Jetty or any other fixed or movable thing whatsoever (not being another ship or any property therein or the cargo or other property intended to be or being or having been carried in the entered ship);

(f) If a claim arises under this Rule upon a collision involving two ships belonging to the same Owner he shall be entitled to recover from the Association, and the Association shall have the same rights, as if the ships had belonged to different Owners; and

(g) If both ships are to blame, then unless the liability of the Owners of one or both of them

becomes limited by law, claims under this Rule shall be settled upon the principle of cross-liabilities, as if the Owner of each ship had been compelled to pay the Owner of the other ship one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the former in consequence of the collision.

FIXED AND FLOATING OBJECTS

(14) (A) Loss or damage or expense for which the Owner may as a party to the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution, be liable or in respect of which such Owner would be insured if the entered ship were fully insured against such liabilities under a Certificate of Entry of the International Tanker Indemnity Association Limited.

PROVIDED ALWAYS that:—

An Owner entitled to recover from the Association for any loss or damage insured under this paragraph shall have no claim against the Association for the same loss or damage under paragraph (14)(B) of this Rule.

(B) Loss of or damage to any Harbour, Dock, Pier, Jetty or any other fixed or moveable thing whatsoever not being another ship or any property therein, or the cargo or other property intended to be or being or having been carried in the entered ship, if liability for such loss or damage is imposed by statute or arose out of the negligent navigation or management of an entered ship or other negligent act or omission on board of or in relation to an entered ship; but including other ships, vessels or craft if the liability of the Owner for such loss or damage arises under the terms of an indemnity given by him to the owners or operators (including Port or Dock Authorities) of any dock or drydock.

PROVIDED ALWAYS that:—

(i) The terms of the indemnity shall have been approved by the Managers and that the Directors shall have power at any time to prohibit any such indemnity or form of indemnity for use at any particular port, dock or place.

(ii) An Owner entitled to recover from the Association for any loss or damage insured under this paragraph shall have no claim against the Association for the same loss or damage under paragraph (14)(A) of this Rule.

If a claim is made on the Association under paragraph (14) of this Rule upon loss of or damage to any property or object belonging to the Owner in respect of whose entered ship the claim arose,

the Owner shall be entitled to recover from the Association and the Association shall have the same rights, as if such property or object had belonged to a third party, but to the extent only that such loss or damage is not recoverable under any other insurance upon the said property or object.

DAMAGE TO VESSELS OTHER THAN BY COLLISION

(15) Loss of or damage to any other ship or any property therein (and costs and expenses incidental thereto) occasioned otherwise than by collision with the entered ship and arising out of the negligent navigation or management of the entered ship or other negligent act or omission on board of or in relation to the entered ship.

If a claim arises under paragraph (15) of this Rule upon loss of or damage to any other ship belonging to the Owner in respect of whose entered ship the claim arose, the Owner shall be entitled to recover from the Association and the Association shall have the same rights, as if the ship lost or damaged had belonged to a third party, but to the extent only that such loss or damage is not recoverable under any other insurance upon such ship.

LIABILITY UNDER TOWAGE CONTRACTS

(16) (A) Loss or damage arising out of or during the course of customary towage of an entered ship in the ordinary course of trading for which the Owner may become liable under the terms of the towage contract but only to the extent to which such liability is not recoverable under the Hull Policies;

PROVIDED ALWAYS that:—

The Directors may reject or reduce a claim under this paragraph if they decide that it was unreasonable, having regard to all the circumstances of the case, to perform the particular towage or to enter into the particular contract of towage or if in their opinion the particular contract of towage should reasonably have provided that the relevant risks and liabilities did not fall upon the Owner of the tow.

Note: The cover afforded by this Rule is generally limited to customary towage within the port area for the purpose of loading, discharging or shifting berth in the ordinary course of trading. Any owner contemplating a towage contract which does not clearly fall within these limitations should consult the Managers at the earliest opportunity, before the tow commences, to determine whether or not cover is prejudiced

(B) Loss or damage for which the Owner may become liable arising out of or by reason of any agreement or contract for the towage by the entered ship of any other ship or object shall be recoverable only if the Directors shall decide that, having regard to all the circumstances of the case, the particular claim falls within the scope of the Association.

PROVIDED ALWAYS that:—

The Directors may reject or reduce a claim under this paragraph if they decide that it was unreasonable, having regard to all the circumstances of the case, to perform the particular towage or to enter into the particular contract of towage or if in their opinion the particular contract of towage should reasonably have provided that the relevant risks and liabilities did not fall upon the Owner of the entered vessel.

LIABILITY ARISING UNDER CONTRACTS FOR HIRE OF CRANES, LIGHTERS OR OTHER LOADING AND DISCHARGING APPLIANCES

(17) Loss or damage for which an Owner may become liable under the terms of an indemnity given by him to the owners or operators of floating cranes or lighters or other appliances or craft used during the operations of loading or discharging an entered ship, including liability for loss of life or personal injury but excluding liability for any cargo or other property intended to be or being or having been carried in the entered ship:

PROVIDED ALWAYS that:—

The terms of the indemnity shall have been approved by the Managers and that the Directors shall have power at any time to prohibit any such indemnity or form of indemnity for use at any particular port or place or in any particular trade.

REMOVAL OF WRECK

(18) Costs and expenses of or incidental to the raising, removal, destruction, lighting or marking of the wreck of an entered ship, when such raising, removal, destruction, lighting or marking is compulsory by law or the costs thereof are legally recoverable from the Owner.

PROVIDED ALWAYS that:—

(a) The value of all stores and materials saved, as well as of the wreck itself, shall first be deducted from such costs charges and expenses, and only the balance thereof, if any, shall be recoverable from the Association.

(b) Nothing shall be recoverable from the Association under paragraph (18) of this Rule if

the Owner shall, without the consent of the Managers in writing, have transferred his interest in the wreck, otherwise than by abandonment, prior to the raising, removal, destruction, lighting or marking of the wreck

QUARANTINE EXPENSES

(19) Quarantine expenses and extraordinary expenses incident to the outbreak of infectious disease upon an entered ship incurred for or by way of:—

(a) The disinfection of the entered vessel or of persons on board her under Quarantine or Public Health Enactments, Regulations or Orders, including the cost of taking in fuel in Quarantine, and of loading and discharging cargo and of the victualling of the crew and passengers after deducting the ordinary expenses of loading, discharging and victualling;

(b) Fuel consumed or towage in proceeding to and from and lying at a special Station or place in accordance with such Enactments, Regulations or Orders; and

(c) Expenses directly consequent upon bearing up for, or putting into, a port or place of refuge and resuming the voyage thereafter by reason solely of the outbreak of infectious or contagious disease upon an entered ship.

PROVIDED ALWAYS that:—

There shall be no recovery under paragraph (19) of this Rule if the entered ship was, at the times such expenses were incurred, chartered to proceed to or under orders from the Owner to proceed to a port at which it was known or should in the determination of the Directors have reasonably been anticipated that she would be quarantined.

LIABILITY FOR LOSS OR SHORTAGE OF CARGO OR OTHER PROPERTY

(20) Loss of cargo or other property intended to be or being or having been carried in an entered ship arising out of any breach by the Owner or by any person for whose acts, neglect or default he may be legally liable of his obligation or duty as a carrier by sea properly to load, handle, stow, carry, keep, care for, discharge and deliver such cargo or property, or out of unseaworthiness or unfitness of the entered ship.

LIABILITY FOR DAMAGE TO OR RESPONSIBILITY IN RESPECT OF CARGO OR OTHER PROPERTY

(21) Damage to or responsibility in respect of cargo or other property intended to be or being or having been carried in an entered ship arising out

of any breach by the Owner or by any person for whose acts, neglect or default he may be legally liable of his obligation or duty as a carrier by sea properly to load, handle, stow, carry, keep, care for, discharge and deliver such cargo or property, or out of unseaworthiness or unfitness of the entered ship.

Under this paragraph (21) an Owner shall be entitled also to recover the extra cost (in excess of the cost which would normally have been incurred by him under the contract of carriage) of discharging or disposing of damaged or worthless cargo, provided that the Owner is liable for such cost and has no recourse to recover the same from any other party; but in such circumstances only half the cost of any coeprage shall be recoverable from the Association.

PROVIDED ALWAYS that in relation to paragraphs

(20) and (21) of this Rule:—

(a) If the contract of carriage under which any cargo is carried solely in the entered ship is not subject to the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on the 25th August, 1924 (known as 'The Hague Rules') or to equally wide exemptions of the carrier from liability, the Directors may reject or reduce a claim to the extent to which it would not have arisen under paragraphs (20) or (21) of this Rule if the contract of carriage had been subject to such provision unless the Owner shall have given notice in writing to the Managers of the contract of carriage and its terms immediately he became aware of them and the Managers have been able to effect an insurance of the liability of the Association and/or the Owner, at the expense of the Owner, in respect of such cargo;

(b) An Owner shall be entitled to recover from the Association loss of or damage to or responsibility in respect of cargo or other property being carried by a means of transport other than the entered ship, for which the Owner may be liable under a Through or Transshipment Bill of Lading or other form of Contract of Carriage issued for a carriage partly to be performed by an entered ship; but the Directors shall have power at any time to prohibit, for use in any particular trade, any form of Through or Transshipment Bill of Lading or other form of Contract of Carriage under which the Owner of an entered ship may become liable for loss of or damage to cargo by a means of transport other than the entered ship;

Note: By Resolution passed on 17th February, 1969 the Directors excluded cover for loss or damage to

cargo carried under Through Bills of Lading from ports in the Rivers Paraguay and Parana, and arising prior to shipment in the entered vessel.

(c) An Owner shall be entitled to recover from the Association loss of or damage to or responsibility in respect of cargo or other property for which the Owner may become liable under the terms of a contract with or of an indemnity given by him to the owners or operators of floating cranes or lighters or other appliances or craft used during the operations of loading or discharging or forwarding cargo in or from an entered ship, or to persons responsible for the custody of cargo to be loaded in or having been discharged from an entered ship;

PROVIDED ALWAYS that:—

The terms of the contract or indemnity shall have been approved by the Managers and that the Directors shall have power at any time to prohibit any such contract or indemnity or form of indemnity for use at any particular port or place or in any particular trade

(d) (i) An Owner shall not be entitled to recover from the Association any liability, costs or expenses in excess of a maximum of U.S. \$2,400 per unit, piece or package in respect of shipments of goods carried under an *ad valorem* Bill of Lading where the value per unit, piece or package has been stated to be in excess of U.S. \$2,400 unless the Owner shall have given prior notice to the Managers of his intention to carry such shipments, together with such other particulars as may be required to enable the Managers to effect any insurance they consider necessary of the liability of the Owner in respect of such shipments. The Owner shall pay the whole or such part of the cost of such insurance as the Managers may require;

NOTE: The following particulars are normally required:

- (a) the terms of the Contract of Carriage,
- (b) the port or places where such shipments begin and end, also the anticipated duration of the Owner's responsibility therefor, and
- (c) the nature and value of such shipments.

(ii) An Owner shall not be entitled to recover from the Association any liability, costs or expenses in respect of shipments of specie, bullion, precious or rare metals or stones, plate or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments, unless the Managers have approved in writing the Contract of Carriage and the security arrangements made to safeguard the shipments.

NOTE: Any owner undertaking the carriage of specie, etc. should consult the Managers and ascertain if

additional insurance is necessary in which event the liabilities can, in normal circumstances, be covered under the Association's open cover for the owner's account.

(e) The refrigerated spaces, plant and apparatus used for the carriage of cargo or other property shall be regularly inspected by the surveyors of the ship's Classification Society and shall at all times comply with such surveyors' recommendations and requirements. In the event that an Owner shall fail to comply with this sub-paragraph, then without prejudice to Rules 20(B) (v) and 31(A) the Owner shall not be entitled to recover from the Association any claim, liability, loss or expense arising in connection with such refrigerated spaces, plant or apparatus, unless and to the extent that the Directors in their absolute discretion shall otherwise determine.

(f) If the cargo in respect of which a claim is made on the Association under paragraphs (20) and (21) of this Rule is the property of the Owner, such cargo shall be deemed to be fully insured under policies on terms not less wide than those of the usual Lloyd's Policy with Institute Cargo Clauses (F.P.A.) attached and the Owner shall be entitled only to recover from the Association the amount (if any) by which the claim exceeds the sum recoverable under such insurance;

(g) There shall be no recovery under paragraphs (20) or (21) of this Rule if liability, costs or expenses arise in consequence of a deviation of an entered ship, unless in the case of a deviation authorised by the Owner, he shall prior thereto have given notice of the same to the Managers or, in the case of a deviation without his authority, he shall have given notice to the Managers immediately upon receiving information thereof. Nevertheless the Directors shall have power to authorise the payment by the Association of such a claim in whole or in part if the Directors shall determine that the Owner had reasonable grounds for believing that no deviation was to be or had been made or that, having regard to all the circumstances of the case, the Owner should be otherwise excused for failure to give such notice. The Owner shall pay the whole or such part (if any) as the Directors may require of the cost of any special insurance of the liability of the Association and/or of the Owner arising in consequence of any deviation authorised by the Owner as the Managers may have deemed prudent to effect;

NOTES: (1) If the Contract of Carriage contains a Voyage Clause approved by the Association the necessity of effecting a special insurance may in certain cases be avoided, in the discretion of the Managers

(2) *The shipment of cargo on deck without a specific statement in the Bill of Lading that that particular cargo is shipped on deck has been held in some countries to be a deviation.*

(h) Unless the Directors shall in their sole discretion otherwise determine, there shall be no recovery under paragraph (21) of this Rule in respect of an Owner's liability arising out of discharge of the cargo or any part thereof at a port or place other than that stipulated in the Contract of Carriage, or in respect of an Owner's liability arising, otherwise than under a Bill of Lading already issued, out of the failure to arrive or late arrival of an entered ship at a port of loading, or out of failure to load any particular cargo or cargoes in an entered ship, or in respect of an Owner's liability arising out of delivery of cargo without production of the relevant Bill of Lading, or out of the issue of an ante-dated or post-dated Bill of Lading or a Bill of Lading knowingly issued with an incorrect description of the cargo or its condition.

(i) Loss of freight or hire or any proportion thereof shall be recoverable under paragraphs (20) or (21) of this Rule if, but only if, such loss is part of the measure of damage recoverable by persons interested in cargo carried in the entered ship for loss of or damage to such cargo, or is, with the consent of the Managers, included in the compromise of a claim by such persons.

COLLISION LIABILITY TO CARGO CARRIED IN AN ENTERED SHIP

(22) Loss of or damage to cargo or other property being carried in an entered ship arising out of collision between the entered ship and another ship against which the Owner is liable by law to indemnify the owner or charterer of such other ship. If the cargo carried in the entered ship is the property of the Owner, such cargo shall be deemed to be fully insured under policies on terms not less wide than those of the usual Lloyd's Policy with Institute Cargo Clauses (F.P.A.) attached, and the Owner shall be entitled only to recover from the Association the amount (if any) by which such indemnity exceeds the sum recoverable under such insurance.

NOTE: Provided that the Contract of Carriage contains the usual exemption of the carrier from liability for the negligent navigation or management of the entered ship, the indemnity specified in paragraph (22) of this Rule can only arise if responsibility for the collision is determined under the laws of a country which has not adopted the International Convention for the Unification of

Certain Rules to govern the Liability of Vessels when collisions occur between them signed at Brussels, 1910, which is incorporated in the law of England by The Maritime Conventions Act, 1911.

CARGO'S PROPORTION OF GENERAL AVERAGE

(23) Cargo's proportion of General Average, Special Charges or Salvage which is not legally recoverable solely by reason of a breach of the Contract of Carriage;

PROVIDED ALWAYS that:—

(a) If the Cargo's proportion is irrecoverable by reason of a deviation, the terms of Rule 34 (21) proviso (g) shall likewise apply to any claim under Rule 34 (23); and

(b) The Directors may reject or reduce a claim under paragraph (23) of this Rule if the Contract of Carriage under which the cargo concerned was being carried did not contain as part of its terms the provisions of Article 4 Rule (2) (a) of the International Convention for the Unification of Certain Rules relating to Bills of Lading, signed at Brussels on the 25th August, 1924 known as 'The Hague Rules' or an equally wide exemption from liability, whereby neither the Carrier nor the ship is liable for loss or damage arising or resulting from the act, neglect or default of the Masters, Mariners, Pilot or the servants of the Carrier in the navigation or management of the ship.

SHIP'S PROPORTION OF GENERAL AVERAGE

(24) Ship's proportion of General Average, Special Charges or Salvage not recoverable under the Hull Policies by reason of the value of the entered ship being assessed for contribution to General Average or Salvage in a country other than that in which the ship is managed at a sound value in excess of the insured value under the Hull Policies.

PROVIDED ALWAYS that:—

(a) The Directors may for the purpose of assessing any sum recoverable under paragraph (24) of this Rule determine the proper value at which the entered ship should have been insured under the Hull Policies, and the Association shall pay only the amount (if any) of the ship's proportion of General Average which would not have been recoverable under the Hull Policies, even if the ship had been insured, thereunder at such value;

(b) The Managers may prior to the commencement of any policy/year determine what, if any, additional contribution shall be paid by any Owner whose ship

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is entered in the Association upon the terms that he shall be indemnified under paragraph (24) of this Rule against Ship's Proportion of General Average not recoverable under the Hull Policies and in this event there shall be no recovery from the Association under this Rule by any Owner who has not paid such additional contribution; and

(c) The Managers shall have power, but shall not be bound, at the request of an Owner to agree for the purpose of paragraph (24) of this Rule the proper value at which an entered ship should be insured for the current year.

FINES

(25) Fines imposed upon an Owner in respect of an entered ship by any court, tribunal or authority of competent jurisdiction for failure to maintain safe working conditions in respect of an entered ship under the provisions of the Factories Acts or similar statutes, decrees or regulations of any country.

(26) Fines imposed upon an Owner in respect of an entered ship by any court, tribunal or authority of competent jurisdiction for short or over delivery of cargo, or for failure to comply with regulations relating to declaration of goods or to documentation of the ship or cargo.

(27) Fines or any other penalties imposed upon an Owner in respect of an entered ship by any court, tribunal or authority of competent jurisdiction:—

(a) For smuggling by the Master, Officers or Crew of the ship or other servant or agent of the Owner or person for whom the Owner may be held responsible; or

(b) For any infringement of any Customs Law or Regulation relating to the construction, adaptation, alteration or fitment of the entered ship

(28) Fines imposed upon an Owner in respect of an entered ship by any court, tribunal or authority of competent jurisdiction for breach of any matter relating to immigration.

(29) Fines, other than those specified in paragraphs (25), (26) and (27) of this Rule, imposed upon an Owner by any Court, tribunal or authority of competent jurisdiction for any neglect or default of the Master, Officers or crew or other servant or agent of the Owner in respect of an entered ship.

PROVIDED ALWAYS that:—

The Association shall not in any event indemnify an Owner against a fine imposed upon him for the overloading of an entered ship or against the legal costs and expenses relating thereto.

ENQUIRY EXPENSES

(30) Costs and expenses incurred by an Owner in defending himself or in protecting his interests before a Formal Enquiry into the loss of or casualty to an entered ship in cases in which, in the opinion of the Managers, a claim upon the Association is likely to arise out of such loss or casualty.

EXPENSES ARISING FROM INTERFERENCE BY LOCAL AUTHORITIES

(31) Costs and expenses incurred with the authority of the Directors in the defence of or obtaining redress for an Owner in cases of interference by any lawful authority of any country, which the Directors shall decide to be unwarranted or to require investigation.

EXPENSES INCIDENTAL TO SHIPOWNING

(32) Liabilities, costs and expenses incidental to the business of owning, operating or managing ships which the Directors may decide to be within the scope of the Association. Claims under this paragraph shall be recoverable to such extent only as the Directors may determine

NOTE: This Rule does not include liabilities, costs and expenses which are expressly excepted in the Rules: in this context attention is especially drawn to Rules 28 to 33.

LEGAL EXPENSES

(33) Costs and expenses, including legal costs and charges, which an Owner may incur in respect of (or in avoiding or attempting to avoid) any liability or expenditure against which he is wholly or, by reason of a deductible, partly insured by the Association;

PROVIDED ALWAYS that:—

No such costs or expenses shall be recoverable unless either (a) the same have been incurred with the prior consent in writing of the Managers, or (b) the Directors shall determine that such costs or expenses were reasonably incurred.

EXPENSES INCURRED BY DIRECTION OF THE ASSOCIATION

(34) Costs, expenses and loss which an Owner may incur by special direction of the Association in cases in which the Directors consider that the interests of the Members of the Association are or may be affected.

DEDUCTIBLES

(35) The following deductibles will be applied to the claims specified below under this Rule, unless otherwise agreed between the Owner and the

Managers as part of the terms and conditions upon which the ship was accepted for entry under Rule 6 (A).

Paragraphs (1) to (10) of this Rule—Claims for expenses relating to illness of crew, including claims due to repatriation, substitutes and deviation arising out of illness of crew, shall be limited to the excess of U.S.\$120 in any one port upon ships of 2,500 gross register tons or over, and to U.S.\$60 in any one port upon vessels below 2,500 gross register tons: but combined claims, which it is established have arisen out of the same illness and have necessitated expenditure at more than one port, shall in the aggregate be recoverable in the excess of U.S.\$120 or U.S.\$60 respectively

Paragraphs (20), (21) and (23) of this Rule—Claims for loss of or damage to or responsibility in respect of cargo or for cargo's proportion of General Average, Special Charges or Salvage not legally recoverable solely by reason of a breach of the Contract of Carriage shall be limited as follows:—

(a) To the excess of 12 U.S. cents per gross register ton or U.S.\$720 (whichever be the less) in respect of each General Cargo carried on each cargo voyage, and

(b) To the excess of 12 U.S. cents per gross register ton or U.S.\$240 (whichever be the less) in respect of cargo, other than general, each cargo voyage.

The Association may, however, by direction of the Directors undertake the defence of an Owner or institute legal proceedings on his behalf in respect of any amount not recoverable from the Association by reason of the deductibles applied to paragraphs (20) and (21) of this Rule for the purpose of ascertaining in due course the legal liability or rights of the Owner, and the Association shall bear the expense of such legal proceedings, but the Owner shall himself bear any damages therein adjudged or awarded against him.

NOTE: Any cargo is considered as General Cargo if it does not fall into one of the following categories:

(i) *Cargoes of one commodity that are trimmed, not stowed.*

(ii) *Cargoes consisting solely of bagged produce.*

(iii) *Cargoes consisting solely of grain when part is shipped in bulk and part in bags.*

(iv) *Cargoes of homogeneous liquids in bulk.*

Paragraphs (25) to (29) of this Rule—Fines and other Penalties—Each claim under these paragraphs shall be limited to the excess of U.S.\$120.

None of the above deductibles shall apply to costs incurred with the authority or approval of the Managers.

35 An Owner may be insured, but only by special agreement with and upon such terms as may be agreed with the Managers, against any of the following liabilities, costs or expenses even if the same arise out of or in consequence of the operation of any of the perils, risks or occurrences enumerated in the Lloyd's Free of Capture and Seizure Clause, namely:—

(a) Life salvage;

(b) Loss of life, personal injury, illness or hospital, medical, funeral or other expenses arising therefrom;

(c) Maintenance and repatriation;

(d) Putting into port to land stowaways or to land or secure the necessary treatment for injured or sick persons;

(e) Sending abroad substitutes or securing, engaging, repatriating or deporting substitutes engaged abroad;

(f) Wages payable during unemployment consequent upon the loss or wreck of an entered ship including payments made to Seamen under the English Merchant Shipping (International Conventions) Act, 1925 or similar legislation;

(g) Loss of Crews' Effects payable under the National Maritime Board Agreements or similar Agreements approved by the Directors, or under statutory obligation; and

(h) Costs, charges and expenses of or incidental to the raising, removal, destruction, lighting or marking of the wreck of an entered ship;

PROVIDED ALWAYS that:—

The appropriate terms and conditions of Rules 34 (1) to (11) inclusive and (18) shall also apply to any claim made under this Rule, and any claim under this Rule shall be subject to the same deductible as if it had arisen under Rule 34.

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Respondent's Exhibit C
(Extract from TOVALOP Manual)

[PHOTOSTATS]

(Opposite) 

TOVALOP

**TANKER OWNERS VOLUNTARY AGREEMENT
CONCERNING LIABILITY FOR OIL POLLUTION**

Administered By

THE INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION LTD.

41/43 MINCING LANE

LONDON EC3R 7AE

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**EXPLANATION OF THE TANKER OWNERS
VOLUNTARY AGREEMENT CONCERNING LIABILITY
FOR OIL POLLUTION ("TOVALOP")**

This memorandum is designed to serve as a brief summary of the principal points of the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution, which, for the sake of convenience, is called "TOVALOP". As a word of caution, this explanation should not be considered as a substitute for the TOVALOP and its related documents and nothing contained herein should be construed as modifying or amending them.

TOVALOP originated from the determination of certain tanker owners to take constructive action with respect to oil pollution. These owners recognized that marine casualties may, on occasion, lead to pollution of coast lines, at least when crude oil, fuel oil, heavy diesel oil or lubricating oil is discharged. (For convenience these materials will be referred to simply as "oil"). These owners were aware of the fact that traditional maritime laws and practice do not always provide an adequate means for reimbursing national governments who incur expenditures to avoid or mitigate damage from such pollution, as well as tanker owners who, on their own initiative incur this kind of expenditure. They recognized also that traditional maritime law and practice do not encourage voluntary action by tanker owners, or joint measures by governments and tanker owners, against such pollution.

In an effort to establish responsibility to national governments with respect to these matters, to assure that there will be financial capability to fulfil this responsibility and otherwise to alleviate this situation, these tanker owners have developed an Agreement called "TOVALOP" which is available to all tanker owners throughout the world.

TOVALOP provides that a Participating Tanker Owner will reimburse national governments for expenses reasonably incurred by them to prevent or clean up pollution of coast lines as the result of the negligent discharge of oil from one of his tankers. The tanker causing the discharge is presumed to be negligent unless the owner can establish that discharge occurred without the tanker's fault. The Participating Owner would not, under TOVALOP, reimburse prevention or clean-up costs incurred by private parties. However, if a national government spends monies to remove oil from privately owned coast lines, it could, in the case of negligence of the discharging tanker, recover these expenses from the tanker owner.

In the event of a negligent discharge of oil, where the oil pollutes or causes grave and imminent danger of pollution to coast lines within the jurisdiction of a national government, the tanker owner involved is obligated to reimburse the national government concerned for oil removal costs reasonably incurred by it up to a maximum of \$100.00 (U.S.) per gross registered ton of the tanker discharging the oil, or \$10,000,000 (U.S.), whichever is lesser. If the owner himself also helps remove the oil, his costs in effect result in prorating the government's claim where the combined costs exceed these limits.

TOVALOP also contains provisions for reimbursing a tanker owner for any expenses reasonably incurred by him to prevent or clean up pollution from a discharge of oil. These provisions are designed to encourage a tanker owner to take prompt action to remove or mitigate pollution damage.

TOVALOP applies only to physical contamination to land adjoining waters navigated by tankers including structures built on this land. It doesn't cover fire or explosion damage, consequential damage, or ecological damage.

TOVALOP will be administered by a limited company registered in England, and headquartered in London, which will be called The International Tanker Owners Pollution Federation Limited and each tanker owner who becomes a party to TOVALOP would be a member of this Federation. TOVALOP requires each tanker owner who becomes a party to establish and maintain financial capability to fulfil his contractual obligations described above. Parties to TOVALOP may establish their financial capability through arrangements either with a P & I Club, an insurance company or the International

Tanker Indemnity Association Limited, a company formed specifically for the purpose of providing TOVALOP cover, or otherwise as may from time to time be determined by the Federation.

TOVALOP is structured so that all tanker owners of the world can at any time become participants. Tanker owners owning at least 50 per cent. of the tankers of the world (excluding) tankers owned by a government or government agency and tankers of under 3,000 g.r.t.) as measured by gross registered tonnage must become parties before the principal obligations of an owner under TOVALOP come into existence and TOVALOP itself becomes fully effective, and TOVALOP will lapse if 80 per cent. (with the same exclusions just mentioned) do not become parties at the end of two years after its effective date.

In the case of any disputes, a national government can enforce the liability of a tanker owner who is a party to TOVALOP through arbitration under the Rules of the International Chamber of Commerce. This latter feature should avoid the problems of establishing jurisdiction and effecting collection which exist at present in maritime law and practice.

When a tanker owner becomes a party to TOVALOP he continues in the Agreement for an initial period of five years from its effective date and for successive two-year periods, unless he elects to withdraw at the end of one of these periods. All tanker tonnage (including barges capable of seagoing service) owned or bareboat chartered by a party to the Agreement will be covered, excluding LNG and LPG carriers.

In summary, TOVALOP does the following:—

- (1) Encourages immediate remedial action by Participating Tanker Owners in the event of a discharge of oil.
- (2) Assures financial capability of Participating Tanker Owners to fulfil their obligations under TOVALOP through insurance coverage.
- (3) Avoids jurisdictional problems under existing maritime law and practice.
- (4) Places on tanker owner the burden of disproving negligence.
- (5) Provides a national government with machinery for making valid claims notwithstanding the fact that such government might not, under international or local law, have a legal obligation to remove oil discharged from a tanker or a legal right to recover removal expenses.

TANKER OWNERS VOLUNTARY AGREEMENT CONCERNING LIABILITY FOR OIL POLLUTION

Preamble

The Parties to this Agreement are Tanker Owners whose vessels are engaged in the transportation of Oil in bulk by sea, and who recognize that Coast Lines may on occasion sustain Damage by Pollution as a result of Oil discharged when marine casualties occur. They are furthermore aware of the fact that traditional maritime laws and practice do not always provide an adequate means for re-imbursing Governments which incur expenditures to avoid or mitigate such damage, as well as Tanker Owners who, on their own initiative, incur such expenditures. They recognize also that traditional legal regimes do not encourage joint measures by Governments and Tanker Owners against such damage.

In a voluntary effort to establish their responsibility to Governments with respect to these matters, to assure that they will be capable of fulfilling this responsibility, and otherwise to alleviate this situation, the Parties who as of this Seventh day of January, 1969, have executed this Agreement and such other parties who may, as is herein provided, subsequently become Parties to this Agreement, in consideration of their mutual promises herein, have agreed with one another, and do hereby agree as follows:

I. Definitions

Whenever the following words and phrases appear in the Preamble and other Clauses hereof, they shall have the meaning indicated below:

- (a) "Tanker" means any tank vessel (whether or not self-propelled) designed and constructed for the carriage by sea in bulk of crude petroleum and hydrocarbon fuels and oils derived therefrom (excluding however, liquefied petroleum gas and liquefied natural gas), whether or not such vessel is operated in sea-going service.
- (b) To "own" a Tanker means to hold title thereto, except that in the case of a Tanker under bareboat charter (that is, a Tanker chartered upon terms providing that the Charterer shall man, victual, and navigate the Tanker at his own expense or by his own procurement) to "own" a Tanker means to be such Charterer, to the exclusion of the holder of title to said Tanker. The term "Tanker Owner" means any individual, partnership, corporate body, or Government who so owns a Tanker.
- (c) "Participating Owner" means a Tanker Owner who has become a Party to this Agreement.
- (d) "Participating Tankers" means all Tankers owned by a Participating Owner.
- (e) "Oil" means crude oil and its residuals (including but not limited to asphalt, bitumen, fuel oil and heavy diesel oil) and lubricating oil, whether or not carried as cargo.
- (f) "Discharge of Oil" means any discharge of Oil from a Tanker, including any spilling, leaking, pumping, emitting, emptying or dumping of Oil.
- (g) "Coast Lines" means land (including structural improvements thereon) adjoining the sea, inland waterways, lakes, bays, harbours, and estuaries.
- (h) "Damage by Pollution" means physical contamination damage to Coast Lines resulting directly from a Discharge of Oil, and does not include damage from fire or explosion, consequential damage, or ecological impairment.
- (i) "Government" means a National Government recognised as such under international law or custom and may include any local government, public authority or organisation within the jurisdiction of such National Government on whose behalf such National Government shall confirm its readiness and competence to act for the purposes of this Agreement.
- (j) "Incident" means any occurrence or series of occurrences having the same

origin which causes, or creates a grave and imminent danger of causing Damage by Pollution to Coast Lines from a Discharge of Oil.

- (k) "Remove" means to take all reasonable measures to prevent potential Damage by Pollution and to mitigate Damage by Pollution from a Discharge of Oil, and "Removal" means the taking of such measures.

II. General Conditions

- (A) Any Tanker Owner in the world may become a Party to this Agreement.
- (B) The Parties to this Agreement will form, or cause to be formed, under and pursuant to the laws of England, a company limited by guarantee to be named "The International Tanker Owners Pollution Federation Limited" (hereinafter called the "Federation"), which will administer this Agreement.
- (C) Each Party to the Agreement will (i) from and after the date of this Agreement or as of the later date on which he becomes a Party hereto, as the case may be, abide by the Memorandum and Articles of Association of the Federation and all rules or directives of the Federation, and (ii) upon the "Effective Date" hereof as provided in Clause III, or as soon thereafter as he becomes a Party to this Agreement, establish and maintain his financial capability to fulfil his obligations under this Agreement as prescribed in said Memorandum, Articles, Rules and directives.
- (D) A Tanker Owner who is not one of the original signatories to this Agreement will become a Party to this Agreement upon acceptance by the Federation of an application in the form annexed hereto as Exhibit "A", wherein the applicant shall indicate his commitment to be bound by this Agreement and to become a member of the Federation.
- (E) The rights and obligations of each Party to this Agreement under this Clause II, except as otherwise stated herein, shall come into effect upon the date said Party becomes a Party hereto.

III. Duration and Coverage

- (A) This Agreement shall come into effect (except as otherwise specified in Clause II) upon a date selected and announced by the Federation which shall be as early as is practicable after a determination by the Federation that fifty per cent. of the Tankers of the world (excluding Tankers owned by a Government or Government agency and Tankers of under 3,000 gross registered tonnage) as measured by gross registered tonnage have become Participating Tankers. The date so selected and announced shall be known as "Effective Date".
- (B) Each Participating Owner shall be a Party to this Agreement for the interval indicated below:—
- (i) A Participating Owner who becomes a Party prior to the expiration of five years from the Effective Date shall be a Party until the expiration of said five year interval and for successive intervals of two years each, unless he gives written notice of withdrawal to the Federation prior to the commencement of the last year of said five year interval or prior to the last year of any subsequent two-year interval, said withdrawal being effective at the end of the interval during which notice has been so given. Notwithstanding the foregoing, however, this Agreement shall terminate earlier if the gross registered tonnage of Participating Tankers, as determined by the Federation, fails to include at least 80 per cent. of the Tankers of the world, (with the exclusions mentioned in the preceding paragraph), as measured by gross registered tonnage at the end of two years from the Effective Date.
- (ii) A Participating Owner who becomes a Party during any successive two year interval as referred to in sub-paragraph (B) (i) above, shall be a Party until the expiration of the two year successive interval during the first year of which he gives written notice of withdrawal to the Federation.
- (C) The rights and obligations of each Party to this Agreement shall apply with respect to all Tankers at any time owned by him while he is a Party to this Agreement.

(D) Termination of this Agreement or withdrawal therefrom under this Clause III, or otherwise, shall not terminate the rights and obligations of any Participating Owner then accrued hereunder. Upon termination of this Agreement the Federation shall continue in existence for such reasonable period as is necessary to wind up its affairs.

IV. Liability and Responsibility to Governments

(A) If a discharge of Oil occurs from a Participating Tanker through the negligence of that Tanker (and regardless of the degree of its fault), and if the Oil causes Damage by Pollution to Coast Lines within the jurisdiction of a Government, or creates a grave and imminent danger of Damage by Pollution thereto, then the Participating Owner of that Tanker shall Remove the Oil so discharged, or pay the costs reasonably incurred by the Government concerned to Remove the said Oil, subject to the maximum liability set forth in Clause VI.

(B) The Participating Owner shall be liable under Paragraph (A) hereof unless he can prove that the Discharge of Oil from his Participating Tanker occurred without fault on the part of said Tanker.

V. Removal by Participating Owner

The Federation, in connection with prescribing steps whereby each Participating Owner shall establish financial capability as provided in Clause II (C) (ii), and to encourage Participating Owners to take prompt Removal action (such Removal not constituting an admission of negligence), shall make arrangements whereby a Participating Owner who incurs reasonable expenditures for Removal of Oil discharged from a Participating Tanker owned by him shall be entitled to reimbursement therefor, without regard to negligence, subject to the terms of such arrangements.

VI. Maximum Liability

(A) The liability of a Participating Owner, pursuant to Clause IV, shall, with respect to each of his Participating Tankers involved in any one Incident, in no event exceed U.S. \$100.00 per gross registered ton of each such Participating Tanker, subject to a maximum of U.S. \$10,000,000.00 in respect of each such Participating Tanker.

(B) In the event that a Participating Owner incurs liability hereunder to several Governments with respect to any one Incident and that the amounts reasonably spent by these Governments for Removal of Oil exceeds the limit referred to in Paragraph (A) hereof, then the Participating Owner's maximum liability to a particular Government shall be that portion of said limit that such Government's Removal expenses bear to the aggregate of the several Governments' Removal expenses.

(C) If, however, a Participating Owner and a Government (or Governments) incur Removal expenses as a result of the same Incident, then the Participating Owner's liability shall in no event exceed that part of the limit prescribed in Paragraph (A) hereof which the Government's (or Governments') Removal expenses bear to the aggregate of the Government's (or Governments') Removal expenses and the Participating Owner's Removal expenses.

VII. Procedure and Miscellaneous

(A) In the event of a Discharge of Oil from a Participating Tanker, the Participating Owner of said Tanker shall notify the Federation of such Discharge and the action (if any) taken and intended to be taken by him to Remove the Oil, and whether a claim has been filed against said Owner by any Government (or Governments).

(B) The Federation shall, on behalf of the Participating Owner concerned, send the Government or Governments concerned a copy of this Agreement and a confirmation that the owner of the Participating Tanker is, or was, at the time of such Discharge, a Participating Owner.

(C) The Government or Governments concerned should then, if they believe they have a valid claim hereunder and if they have not already done so, file notice of claim on the Participating Owner, sending a copy to the Federation.

(D) A Participating Owner shall have no liability hereunder to a Government unless that Government's claim hereunder, including the amount thereof and supporting data, is filed with said Owner, with a copy to the Federation, within one year of the date of the commencement of the alleged Discharge of Oil involved.

(E) The Government or Governments concerned may, in the event of a dispute under this Agreement with a Participating Owner, commence arbitration proceedings, in accordance with Paragraph (K) hereof, within two years from the date of the commencement of the alleged Discharge of Oil involving said Owner and said proceedings shall be the exclusive means for enforcing a Participating Owner's liability hereunder. Each Participating Owner by becoming a Party to this Agreement, and for so long as he remains bound thereby, shall be deemed irrevocably to have offered to any such Government to submit all such disputes to arbitration as provided in said Paragraph (K).

(F) Any payment hereunder to a Government by or on behalf of a Participating Owner shall be in full settlement of all said Government's claims against said Owner, the Participating Tanker involved, their officers, agents, employees and underwriters, which arise out of or are connected with the Discharge of Oil involved.

(G) With the exception of Governments who take advantage of this Agreement, this Agreement shall not affect any other rights of claim or suit which may be legally available to other claimants. This Agreement does not create any rights in persons, partnerships, corporations, or other entities other than Governments.

(H) This Agreement does not create any rights against the Federation and the Federation shall have no liability hereunder or otherwise to any Government, person, partnership, corporation or other entity.

(I) No rights or obligations created hereunder or connected herewith may be assigned or transferred.

(J) No Party to this Agreement shall be subject to any liability to a Government hereunder with respect to a Discharge of Oil from a Participating Tanker owned by another Participating Owner.

(K) All claims by a Government or Governments against a Participating Owner under this Agreement shall, if not otherwise disposed of, be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the rules. In any such proceeding, the Government or Governments shall have the burden of proving the Oil was discharged from the Participating Tanker.

(L) No Removal by a Participating Owner, or making of a settlement payment with respect to any claim under this Agreement, shall be deemed (i) an admission of, or evidence of, liability on the part of the Participating Owner involved to any Government or any other claimant in any proceeding, or (ii) submission to any jurisdiction on the part of said Participating Owner for any purpose whatsoever.

(M) No arbitration award against a Participating Owner under this Agreement shall be deemed (i) an admission of, or evidence of, liability on the part of said Participating Owner in any other proceeding or to any other claimant, or (ii) submission to any jurisdiction on the part of said Participating Owner for any purpose whatsoever other than as provided in this Clause VII.

VIII. Amendments

This Agreement may be amended by Special Resolution adopted at an Extraordinary General Meeting of the members of the Federation upon a poll vote in which at least 75 per cent. of the votes cast are in favour of said Resolution. A Participating Owner who votes against such Resolution shall thereupon have the option to withdraw from this

Agreement within 60 days of the date of said Special Resolution by written notice to the Federation, without, however affecting his rights and liabilities accrued at the time of his withdrawal.

IX. Law Governing

This Agreement shall be governed by the laws of England. However, anything herein to the contrary notwithstanding, a Participating Owner shall not be required:—

- (a) To incur any obligation or take any action, with respect to any Incident in which a Participating Tanker owned by him is involved, which would violate the laws or government regulations of the flag of said Participating Tanker, or
- (b) To incur any obligation or take any action which would violate any other laws or government regulations as may apply to said Participating Owner, or
- (c) To incur any obligation or take any action which would, if a majority of the stock of said Participating Owner is owned, directly or indirectly by another corporation, partnership or individual, violate any laws or government regulations which may apply to said other corporation, partnership or individual.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date indicated in the Preamble hereto, or upon the date on which their application is accepted by the Federation as provided in Clause II (D).

* * *


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Respondent's Exhibit D
(Mobiltime Charter Signed by Kerr on March 25, 1971
with Covering Letter)

[PHOTOSTATS]

(Opposite) 

Ex

(12)

Interocean Shipping Company

25 BROADWAY
NEW YORK, N. Y. 10004

E. S. SHERMAN
PRESIDENT
J. D. KERR
A. E. CHERNITZ
VICE PRESIDENTS

ONLY ADDRESS
"INTEROCEAN"
IN REPLY REFER TO

March 25, 1971

Potem & Partners, Inc.
711 Third Avenue
New York, N. Y. 10017

Attention: Mr. Frank E. De Salvo

Re: SS OSWEGO RELIANCE Charter Party
dated March 17, 1971

Dear Sirs:

We acknowledge receipt of your letter dated March 24, 1971 together with the enclosed MOBILTIME Charter Party dated 17 March, 1971.

The letter and enclosure were received at our office on March 25, 1971, at 9:20 A.M.

We return herewith the said Charter Party duly executed by Mr. J. D. Kerr, Vice President, InterOcean Shipping Company.

Considering the telex received from you at 1:03 P.M. this date, which was after receipt of the said Charter Party, we must insist upon definite confirmation and signing by Charterer no later than Noon, New York time, March 26, 1971. Failing this, we will be forced to seek alternate employment for the vessel and will be obliged to hold Charterer responsible for all losses.

Very truly yours,

INTEROCEAN SHIPPING COMPANY

J. D. Kerr
Vice President

0-1
JRK:MBC
Encl.

Mobil

MOBIL OIL CORPORATION
150 EAST 42ND STREET
NEW YORK, NEW YORK 10017



Original

CO-202 SA (4-67)

Tanker time charter party

mobilltime

Parties
Vessel and
Term

EXECUTED THIS 17th DAY OF March, 1971, between INTEROCEAN SHIPPING COMPANY

OF Monrovia, Liberia

(herein called "Owner") and

HELLENIC INTERNATIONAL SHIPPING S.A.

OF Panama City

for the chartering by Owner to Charterer, for a term of One (1)
less at Charterer's option, of the Liberian

(herein called "Charterer"),
year, 30 days
year, two weeks more or
flag motor/steam tanker vessel named

"OSWEGO RELIANCE"

(herein called "Vessel"), built in 1960 to be built for

delivery hereunder in 1971, by KAWASAKI DOCKYARD CO. LTD.
of KOBE, JAPAN

This Charterer shall be subject to the following terms and conditions:

Description of
Vessel and
Warranties

(Maximum
Beaufort #5)

1. (a) Owner represents, undertakes and warrants that on the date of delivery of Vessel, as herein provided for, Vessel will be (i) of 20,081 tons net register, classed (ii) fitted with engines of 20,250 shaft H.P., maximum continuous rating, as certified by Classification Society, and capable of maintaining in a calm sea a speed of 16.5 knots at 109.7 RPM at above stated horsepower, (iii) average speed loaded and 17.1 in moderate weather, (iv) fully loaded to summer draft with a fuel consumption of 100 tons (of 2240 lbs.) of bunker C fuel oil

per day for main engine and tons (of 2240 lbs.) of per 24 hours for auxiliaries, (v) provided with 1 pumprooms and 3 cargo pumps capable of discharging in the aggregate a minimum of 3,900 tons (of 2240 lbs.) of water and stripping pumps capable of discharging in the aggregate a minimum of 600 tons (of 2240 lbs.) of water, respectively, per hour against a back pressure of 125 p.s.i. at Vessel's manifold, (vi) equipped with both wireless telegraph and V.H.F. radio telephone to comply with International Regulations to allow Vessel to communicate with land stations, (vii) fitted throughout in all cargo and wing tanks and bunker compartments with heating coils of sufficient area to heat and maintain cargo temperature at 135° F. in sea water or 40° F. at all times, (viii) fitted with Butterworth or equally efficient tank cleaning equipment, satisfactory to Charterer, (ix) fitted with evaporator(s) capable of producing sufficient fresh water from sea water to meet Vessel's daily requirements, (x) fitted with steam discharge, and (xi) being so constructed and equipped on delivery under this Charter, in accordance with Regulations now existing, as to enable her to transit the Panama Canal and Suez Canal with Crude Petroleum and/or its products in bulk in accordance with Navigation Regulations.

(b) Owner represents, undertakes and warrants that (i) Vessel can carry 49,283 tons (of 2240 lbs.) total deadweight of cargo, water, bunkers, and stores, on assigned summer mean draft of 39ft. 5/8 in. in salt water, corresponding to a load line summer freeboard of 11ft. 10in. under present International Load Line Regulations, (ii) that her load line is marked and so placed as to allow her being safely loaded to such draft, and (iii) that Vessel has a total capacity for bulk cargo, after deduction of 2% for expansion, of 1,968,842 cubic feet in center and wing tanks, in addition to permanent bunkers which have a capacity, after deduction of 2% for expansion, of 3765 tons (of 40 cubic feet) fuel oil.

(c) Owner undertakes to maintain Vessel, during the period of service under this Charter, so that all the representations and warranties set forth in paragraphs (a) and (b) of this Article 1 shall at all times be true and accurate. Owner further represents, undertakes and warrants that, on the date of delivery, Vessel will then be ready with holds and cargo tanks clear and clean and in every way fitted for the service and carriage of Crude oil and/or dirty petroleum products (Grade B products)

Charterer's option and being on delivery tight, staunch and strong, after having been drydocked and painted at Owner's expense, with pipelines, pumps and heating coils in good working condition, and with a full complement of Master, Officers and Crew for a Vessel of her size and character, and due diligence shall be exercised to so maintain Vessel, in such a state, during the term of this Charter.

(d) Should Vessel, during the term of this Charter, fail to comply with any declaration, undertaking or warranty that Owner has assumed pursuant to the terms and conditions of this Article 1, hire shall be reduced to the extent necessary to fully indemnify Charterer for any such failure, without prejudice or reference to any other claim for failure of guaranteed performance that Charterer may have against Owner under the terms of this Charter.

D-2

2. (a) In addition to the warranties set forth herein, Owner stipulates, agrees and guarantees, that Vessel will, throughout the term of this Charter, maintain in moderate weather, from sea buoy to sea buoy, a guaranteed average speed of no less than **16.5 knots** (which average speed will be determined by taking the total mileage of the actual course which Vessel has travelled divided by the total hours at sea as shown in the log books, excluding stops at sea which are considered as periods of off-hire under the terms of this Charter).

(b) Owner further stipulates, agrees and guarantees that Vessel will, throughout the term of this Charter, maintain the above guaranteed average speed on a fuel consumption of no more than **100 tons (of 2240 lbs.) of bunker C fuel oil** and **tons (of 2240 lbs.) of** per day for main engine and auxiliaries, respectively, excluding heating cargo and tank cleaning. Diesel oil may be used in the main engine for the purpose only of maneuvering in close waters or within port limits, or during periods of low visibility when Master deems necessary, for which purpose the consumption of diesel oil shall not exceed **tons (of 2240 lbs.) per maneuvering hour. Any excess consumption over** tons (of 2240 lbs.) per hour when so maneuvering shall be for Owner's account. For any diesel oil used in main engine other than during maneuvering in close waters, within port limits or when in Master's opinion visibility is low, Owner shall pay Charterer the difference in price between diesel oil and fuel oil of seconds viscosity on the quantity of diesel oil consumed at current market prices.

(c) Owner further stipulates, agrees and guarantees that the cargo and stripping pumps will, throughout the term of this Charter, discharge Vessel's cargo within a maximum of **36** hours against a back pressure of **125** pounds per square inch at the ship's manifold, and that Vessel is fitted with sufficient block valves for complete segregation to enable simultaneous loading and discharge from a centralized manifold amidships of **three (3) grades of cargo, within vessels designed capabilities.**

(d) The speed, fuel consumption and pumping performance which Owner, pursuant to this Article 2, has guaranteed, throughout the term of this Charter, will be reviewed by Charterer **6** calendar months after the date of delivery of Vessel to Charterer, and thereafter at the end of each subsequent period of **6** calendar months; provided, however, that if there should be a period of less than **6** calendar months remaining prior to redelivery, then not later than the commencement of the final month of this Charter. If, in respect of any such period, it is found that Vessel has failed to maintain the speed and/or fuel consumption and/or pumping performance guaranteed pursuant to this Article 2, Charterer shall be compensated in respect of each failing as follows: (i) **SPEED** - For each knot, or pro rata for each part of a knot, below the guaranteed average speed, a reduction in hire per calendar month of **\$0.25** per each DWT of Vessel's capacity reflected in Article 1(b), (ii) **FUEL CONSUMPTION** - Owner to pay Charterer for each ton (of 2240 lbs.), or pro rata for each part of a ton, consumed in excess of the guaranteed daily consumption for main engines and auxiliaries, at Mobil's average contract price for the particular grade of bunkers at Ras Tanura during the particular period under review, (iii) **PUMPING** - Vessel to be considered off-hire for each hour, or part of an hour, in excess of the maximum number of hours guaranteed herein for completing pumping of a full cargo against a back pressure of **125** pounds per square inch. Charterer shall determine whether any delay in pumping is the result of unique characteristics of the cargo being pumped or of the receiving terminal, and, if so, shall consider this factor in assessing the pumping performance. In the event that vessel shall, under the terms, conditions and standards of this Article, excel or better the guarantees set forth herein, except for the guarantee pertaining to pumping performance, (i) hire shall be increased by an amount equal to what would have been deducted in the event and to the extent of a failure of guaranteed speed, and (ii) Owner shall recover from Charterer cost of fuel savings should vessel's consumption be below the guaranteed consumption, provided that the guaranteed speed is, at the same time, maintained

3. (a) Hire shall commence when written notice from the Master has been given to Charterer or its Agents that Vessel is ready for delivery hereunder and is at Charterer's disposal at **a Persian Gulf port excluding Fao and Abadan, or Red Sea Sea** in or at such readily accessible dock, wharf or place where she can always safely lie afloat, as Charterer or its Agents may direct. However, hire shall not commence before **March 31, 1971** unless with Charterer's consent. Charterer shall have the option to cancel this Charter should Vessel not be ready, in accordance with the provisions hereof, before **April 15, 1971**. Said option of cancellation shall be declared not later than the day of Vessel's readiness for delivery.

(b) Vessel may be employed in any part of the World, excluding USSR, People's Republic of China, other Communist controlled territories, and Cuba, unless Owner gives written consent, trading between safe ports in such lawful trades as Charterer or its Agents may direct, subject to Institute Warranties and Clauses as may be in effect throughout the period of this Charter; but including ports on the East Coast of Canada, St. Lawrence River, North American Lakes, Greenland and Baltic Sea, upon payment by Charterer of any additional insurance premiums required by Vessel's underwriters for such latter trading. Charter shall be entitled to send Vessel through the Straits of Magellan at any time of the year.

4. (a) Charterer shall pay for the use and hire of Vessel at the rate of **U.S. Dollars 5.60** per ton per calendar month on Vessel's deadweight, as set forth in paragraph (b) of Article 1, payment to be made in advance monthly in cash without discount to **Interocean Shipping Company 25 Broadway New York, New York 10004** at **New York, New York** less any disbursements made by Charterer or advancements made by Charterer to the Master or Owner's Agents, or less any compensation due Charterers under paragraphs (d) of Article 1 and 2, and less any allowances due Charterer for off-hire. Hire shall commence from the hour (GMT) and date of delivery of Vessel, as herein provided, and shall continue until the hour (GMT) and date of redelivery to Owner at **a Persian Gulf port excluding Fao and Abadan at Owner's option**

unless Vessel is lost or off-hire in accordance with the terms of this Charter. Any hire paid in advance shall be refundable and payable to Charterer by Owner and/or by any party to whom Owner may have assigned the hire, Owner at all times remaining ultimately responsible therefor. Should compliance with future legislation or regulations of classification societies, or other authorities, result in a loss of deadweight, the hire shall be correspondingly decreased to conform to the actual deadweight of Vessel; however, any increase in deadweight resulting from any such future legislation or regulations shall not result in a corresponding increase in hire. Owner and Charterer may agree upon a new rate of hire applicable to such increase in deadweight, and until an addendum to this charter party embodying such agreement is signed on behalf of Owner and Charterer the increase in deadweight shall not be used by Charterer.

(b) In default of payment of hire, as herein specified, Owner shall have the privilege of withdrawing Vessel from the service of Charterer, without prejudice to any claim Owner may otherwise have against Charterer under this Charter.

(c) Should the Vessel be on her final voyage towards the port of redelivery at the time a payment of hire becomes due, said payment shall be made for such length of time as Owner or its Agents and Charterer or its Agents may agree upon as the estimated time necessary to complete the voyage less (i) disbursements arranged by Charterer for Owner's account, (ii) estimated value of fuel in bunkers at the termination of the voyage and (iii) any other sums due Charterer; and when Vessel is redelivered to Owner any difference shall be refunded to or paid by Charterer as the case may be.

Off-hire

5. (a) In the event that a loss of time, in addition to any off-hire allowed pursuant to Article 2, not caused by Charterer's fault, shall (i) continue, due to repairs, breakdown, accident or damage to Vessel, collision, stranding, fire, interference by authorities or any other cause preventing the efficient working of the Vessel, for more than twenty-four (24) consecutive hours, whether at sea or in port, or for an accumulation of more than twenty-four (24) hours during any voyage (a voyage to be considered as a round voyage beginning at the time Vessel tenders for loading at the first port under the voyage in question until such time as it completes the voyage and tenders for loading on the subsequent voyage) or, (ii) continue, for any number of hours (including any part of an hour) due to deficiency of personnel or stores, strike, refusal to sail, breach of orders, or neglect of duty on the part of the Master, officers, or crew, or in order to render salvage services, obtain medical aid or treatment, or for landing any sick or injured person or the body of a deceased person (other than a passenger carried under Article 19 hereof), or due to any other deviation (including the putting back or into any port other than that to which Vessel is bound), then hire shall cease for all time so lost until Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when hire ceased hereunder.

(b) Cost of fuel and water consumed while Vessel is off-hire, pursuant to this Article 5, as well as all port charges, pilotage, towage and other expenses incurred during such period and/or consequent upon putting into any port or place other than to which Vessel is bound, shall be borne by Owner; but should Vessel be delayed or driven into port or to anchorage by stress of weather or on account of accident to, or other consideration for, her cargo, such delay, deviation or loss of time shall be for Charterer's account.

(c) Any delay by ice or time spent in quarantine shall be for Charterer's account, except that delay in quarantine, resulting from the Master, Officers or Crew having communication with the shore at an infected port, where Charterer has given the Master adequate notice of the infection, shall be for Owner's account. Any loss of time through detention by authorities, unless due to Charterer's fault, shall be for Owner's account.

(d) In the event of a breakdown or delay from any cause whatsoever, not otherwise covered by this Article, and Vessel remains on hire, it is mutually understood and agreed that the cost of port charges, tugs, pilots and all other expenses, incurred by reason of such delay, shall be for Owner's account.

Off-hire Option

6. All or any part of the time Vessel is off-hire during the original term of this Charter, or any extension thereof due to off-hire accumulation, shall be added to the term of the Charter, if Charterer so elects and gives Owner written notice thereof at least One month prior to expiry of the term of this Charter as so extended.

Loss of Vessel

7. Should Vessel be lost or become a constructive total loss, hire shall cease on the day of her loss or constructive total loss, or, if missing, from the date when last heard of, and any hire paid in advance and not earned shall be returned to Charterer. If Vessel is missing or off-hire at the time when hire becomes payable, payment of such hire shall be suspended until Vessel's safety is ascertained or the off-hire period ceases.

Lien

8. Owner shall have a lien on all cargoes and sub-freights for all amounts due under this Charter, and Charterer shall have a lien on Vessel for (i) all monies paid in advance and not earned, (ii) the value of fuel in Vessel's bunkers and (iii) all claims for damages arising from any breach by Owner of this Charter.

Advances

9. Owner, upon commencement of this Charter, shall establish a revolving fund with Charterer, replenished monthly or as required, in the amount of _____, Such revolving fund shall be used by Charterer to reimburse it or its Agents for any monies advanced to the Master or Owner's Agents or in payment of disbursements made for Owner's account. Upon termination of this Charter, the amount remaining in said fund, after any disbursement by Charterer and advances made by it to Master or Owner's Agents, and deduction of any other sums owing by Owner to Charterer, shall be refunded to Owner.

2-4 Detention by Authorities or Legal Action

10. In the event of detention of Vessel by any governmental authority, or by any legal action against Vessel or Owner, whereby Vessel is rendered unavailable for Charterer's service for a period of thirty (30) days or more, unless brought about by act or neglect of Charterer, Charterer may, by written notice given before Vessel is free and ready to resume service, elect to terminate this Charter, or to suspend

same until the service can again be resumed, without prejudice to any other rights Charterer may have under the Charter or to any claim they may have for damages. Hire shall cease during the entire time Vessel is out of Charterer's service due to any such detention.

Dry
Docking

11. (a) Owner, at its expense, shall drydock, clean and paint Vessel's bottom, and make all overhaul and other necessary repairs, approximately twelve (12) month intervals, for which purpose Charterer shall allow vessel to proceed to an appropriate port. Owner shall be solely responsible therefor, and also for gasfreeing the vessel, upon each such occasion. All towage, pilotage, fuel, water and other expenses incurred while proceeding to and from, and while in, drydock, shall also be for Owner's account.

(b) In case of drydocking pursuant to this Article at a port where Vessel is to load, discharge or bunker, under Charterer's orders hire shall be suspended from the time Vessel receives free pratique on arrival, if in ballast, or upon completion of discharge of cargo, if loaded, until Vessel is again ready for service. In case of drydocking at a port other than where Vessel loads, discharges or bunkers, payment of hire shall cease from the time of deviation until Vessel is again in the same or equivalent position as though no deviation had occurred. Vessel requires drydocking 4th quarter 1971 for approximately 15 days.
Charterers will give owners as much advance notice as possible so as to position

Owner or
Charterer
To Provide

12. (a) Owner will provide and/or pay for (i) provisions, supplies, deck and engine stores, galley and cabin stores, all P. & I., Hull and other insurance on Vessel, wages of Master, officers and crew, consular fees pertaining to the Master, officers and crew, and all fuel and water used by Vessel if a motor ship, (ii) galley and crew fuel at the monthly rate payable to Charterer of 500 tons oil and and (iii) the cost of all fuel oil and/or diesel oil, and also water if a steamer, on board at redelivery, not to exceed 500 tons oil and tons water, respectively (such costs to be determined at the current market prices at the port and date of Vessel's redelivery; or, if not available there, at current market prices at the nearest port where bunkers are available).

(b) Except when the Vessel is off-hire, Charterer will provide and pay for (i) all diesel and fuel oil, and fresh water if a steamer, and all port charges, light dues, docking dues, Panama, Suez and other Canal dues, pilotages, Consular fees (except those pertaining to the Master, officers and crew), tugs necessary to assist Vessel in, about and out of port (but only in the performance of this Charter), Charterer's Agency fees, and expenses of loading and unloading cargoes, (ii) all telephone calls, radio messages and telegrams sent at the request of Charterer and/or acting for Charterer's account at the monthly rate of plus per line

(iii) all overtime of officers and crew worked at Charterer's request at the monthly rate of \$750 U.S. dollars, and (iv) cost of fuel oil and/or diesel oil, and water if a steamer, on board at delivery, not to exceed 500 tons oil and tons water, respectively (such costs to be determined at the current market prices at the port and date of Vessel's delivery where hire begins; or, if not available there, at current market prices at the nearest port where bunkers are available).

(c) Notwithstanding the provisions of paragraph (b) (i) of this Article, Owner shall reimburse Charterer for any diesel oil, fuel oil and water expended or consumed in a General Average situation and also during a consequent related drydocking or repair of the Vessel.

Duties of
Master

13. (a) Master shall prosecute his voyages with utmost dispatch and render all reasonable assistance with vessel's crew and equipment, including hoisting, connecting and disconnecting hoses at ports or sea berths where requested or where such assistance is a normal practice.

(b) Master, although appointed by, and in the employ of Owner, and subject to Owner's direction and control, shall observe the orders of Charterer as regards employment of Vessel, Charterer's Agents or other arrangements required to be made by Charterer hereunder.

(c) If Charterer should be dissatisfied with the conduct of Master or Officers, Owner shall, on receiving particulars of the complaint, investigate it and if necessary make a change in the appointments.

(d) Master shall be furnished by Charterer, from time to time, with all requisite instructions and sailing directions, and both he and the Engineers shall keep full and correct logs of the voyages, which shall at all times be available to Charterer and its Agents, and abstracts thereof, or such other forms or reports as Charterer may require, shall be sent to Charterer from each port of call.

Condition of Tanks

14. Charterer will redeliver Vessel to Owner at the expiry of this Charter with tanks in condition suitable for the carriage of the cargo defined in Article 1 (c) of this Charter. If under Article 1 (c) Charterer has the option for clean and/or dirty trading then cargo tanks on redelivery may be clean or dirty at Charterer's option. In no event shall Charterer be obligated to redeliver Vessel gasfree.

Previous Cargoes

15. The last two successive cargoes carried, or to be carried, by Vessel immediately preceding her entering upon this Charter consisted, or will consist, of Crude Oil

Safe Berth

16. Vessel shall be loaded and discharged in or at any port, berth, dock, anchorage, submarine line, or other place (e.g., alongside lighters), as Charterer may direct. Charterer shall exercise due diligence to assure that Vessel is employed only between and at safe ports, berths, docks, anchorages, submarine lines, or other places where she can always lie safely afloat; but Charterer shall not be deemed to warrant the safety of any port, berth, dock, anchorage, submarine line, or other place and shall be under no liability in respect thereof, except for loss or damage caused by its failure to exercise due diligence as aforesaid.

Use of Vessel

17. (a) The whole reach and burden of Vessel (but not more than she can reasonably stow and safely carry) shall be at Charterer's disposal, reserving appropriate space for Vessel's Master, Officers, Crew, tackle, apparel, furniture, fuel, provisions and stores.

(b) Charterer shall have the option of shipping lawful merchandise in cases and/or cans and/or other packages in Vessel's forehold,

~~Five decks and/or other suitable space available, subject, however, to Master's approval as to kind and character, amount and stowage. All charges for dunnage, loading, stowing and discharging so incurred shall be paid by Charterer.~~

Oil Pollution

18. Owner undertakes that Master will at all times comply with Charterer's requirements, which Charterer will instruct Master, for the avoidance of pollution of the sea by oil and will retain on board all oily residues at all times and be able to pump such residues ashore either separately or commingled with dirty ballast or cargo as Charterer may require.

Passengers and Super-Cargo

19. Charterer, at its risk and responsibility, may send passengers and/or super-cargo in available accommodations in Vessel upon any voyage made under this Charter, with Owner to provide provisions and all requisites, except liquors, and Charterer to pay at the rate of \$3.00 (or 21s/6d) per diem for each person during the time of such travel.

Bills of Lading

20. Bills of Lading shall be signed at any rate of freight Charterer or its Agents may direct, Master attending daily, if required, at the offices of Charterer or its Agents to so sign. Charterer shall indemnify Owner from all consequence or liabilities that may arise from Master, Charterer or its Agents signing Bills of Lading, or other documents, at the request of Charterer or its Agents, or any irregularity in such papers supplied by Charterer or its Agents.

War Clauses

21. (a) No contraband of war shall be shipped, but petroleum and/or its products shall not be deemed contraband of war for the purposes of this Article. Vessel shall not, however, be required, without the consent of Owner, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations or hostilities, whether there be a declaration of war or not, where it might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any other purported governmental organization maintaining naval, military or air forces).

(b) For the purposes of this Article it shall be unreasonable for Owner to withhold consent to any voyage, route, or port of loading or discharge if insurance against all risks defined in Article 21 (a) is then available commercially or under a Government program in respect of such voyage, route or port of loading or discharge. If such consent is given by Owner, Charterer will pay the provable additional cost of insuring Vessel against all war risks in an amount equal to the value under her ordinary marine policy but not exceeding \$3,500.00. If such insurance is not obtainable commercially or through a Government program, Vessel shall not be required to enter or remain at any such port or zone.

(c) In the event of the existence of the conditions described in Article 21 (a) subsequent to the date of this Charter, or while Vessel is on hire under this Charter, Charterer shall, in respect of voyages to any such port or zone, assume the provable additional cost of wages and insurance properly incurred in connection with Master, officers and crew as a consequence of such war, warlike operations or hostilities.

(d) The provisions of this Article 21 shall apply with the same manner and the same effect to the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

Requisition

22. Should Vessel be requisitioned for use by any government or governmental authority during the term of this Charter, or any extension thereof, Vessel shall be off-hire hereunder during the period of such requisition, and any hire or other compensation paid in respect of such requisition shall be for Owner's benefit. Charterer may add up to one-half of such requisition period to the term of the Charter, if Charterer so elects in the manner provided in Article 6 hereof.

Protection and Indemnity

23. ~~Owner at its expense, throughout the period of this Charter, shall have Vessel fully entered in a Protection and Indemnity Association or Club, in good standing, in both Protection and Indemnity classes.~~

Damage to, or Claims on, Cargo

24. Owner guarantees that Vessel is constructed and equipped to carry, without admixture, at least (Three) 3 qualities or descriptions of oil but, subject to this, neither Owner nor Vessel shall be responsible for any admixture if more than (Three) 3 qualities of oil are shipped, nor for leakage, contamination or deterioration in quality of the cargo, unless the admixture, leakage, contamination or deterioration results from (i) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (ii) ~~error or fault of the servants of Owner in the loading, care or discharge of the cargo.~~

Equipment

25. Charterer, subject to Owner's approval, may at its expense and time fit any additional pumps and/or gear for loading or discharging cargo, or equipment of any other nature, which it may require beyond that on board at commencement of Charter, and to make the necessary connections with steam or water pipes, which pumps, gear or equipment shall be Charterer's property, and Charterer may remove same at its expense and time during or at the expiry of this Charter, but leaving Vessel in her original condition except for reasonable wear and tear.

House Flag

26. Charterer may fly its house flag and paint Vessel's funnel with its own colors or affix thereto Charterer's stack insignia, if desired, at Charterer's expense and time.

Salvage

27. All salvage monies earned by Vessel shall be divided equally between Owner and Charterer after deducting Master's, officers' and crew's share, legal expenses, hire of Vessel during time lost, value of fuel consumed, repairs of damage, if any, and any other extraordinary loss or expense sustained as a result of the salvage service.

Exceptions

28. Vessel, her Master and Owner, shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage arising or resulting from: any act, neglect, default or barratry of Master, pilots, mariners or other servants of Owner in the navigation or management of Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or inherent vice of the cargo; any act or omission of Charterer or Shipper, Consignee or Owner of the cargo, their Agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of Vessel unless caused by want of due diligence on the part of Owner to make Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of Owner. And neither Vessel, her Master or Owner, nor Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss, damage, delay or failure in performing hereunder arising or resulting from: act of God; act of War; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond or other security is promptly furnished to release Vessel or cargo; strike, lockout, stoppage or restraint of labor, picketing, boycotting, or other labor disturbances or interruptions, from whatever cause, either partial or general; or riot or civil commotion. This Article is not to be construed as in any way affecting the provisions for cessation of hire as provided in this Charter.

Diligence of
Pilots, Etc.

29. (a) Charterer shall not be held responsible for losses sustained by Owner or Vessel through the negligence of pilots, tugboats or stevedores, even though Charterer and/or its Agents engage or furnish such services. Owner hereby authorizes Charterer and its Agents to bind Vessel and its Owner to all the terms and conditions of written or implied contracts or agreements for pilotage, towing or stevedoring in accordance with established local practice in the ports where such services are engaged, and Owner shall indemnify and hold Charterer and its Agents harmless from all damages and expenses that may be sustained or incurred in the event of Charterer and/or its Agents engaging or furnishing such services.

(b) Charterer shall have the option of using its own tugs or pilots, or tugs owned or pilots employed by subsidiary or related companies, in the towing, docking, undocking, piloting or other assistance of Vessel. In this event, the terms and conditions for such services prevailing in the port where such services are rendered, and applied by independent tugboat owners or pilots, shall be applicable, and Charterer, its subsidiaries and their pilots shall be entitled to all the exemptions from and limitations of liability applicable to said independent tugboat owners or pilots and their published terms and conditions. The exemption from and limitation of liability accorded Charterer, its subsidiaries or related companies and their pilots shall also include services rendered by pilots when no tugboats are in attendance of Vessel.

Lay-Up

30. (a) Charterer shall have the option of laying up Vessel for all or any portion (exceeding 30 days) of the Charter period, in which case hire hereunder shall continue to be paid, but there shall be credited against such hire the whole amount which Owner shall save (or reasonably should save) during such period of lay-up through reduction in expenses, less any extra expenses to which Owner is put as a result of such lay-up.

(b) Should Charterer, having exercised said option, desire Vessel again to be put into service, Owner shall, upon receipt of written notice thereof by Charterer, restore Vessel to service as promptly as possible. The option granted to Charterer may be exercised one or more times during the term of this Charter or any extension thereof.

W

31. (a) This Charter and its performance shall be construed, interpreted and governed by the applicable law of the United States/England, except in the case of Average or General Average which shall be settled according to York/Antwerp Rules, 1950 (excluding Rule 22) and, as to matters not therein provided for, according to the usages and customs of the Port of New York/London. If a General Average statement is required, it shall be prepared at New York/London by adjusters appointed by Charterer, subject to approval of Owner, who are to attend to the settlement and collection of the General Average, subject to customary charges. Should Vessel put into a port of distress or be under Average, she shall be consigned to Charterer's Agents, paying them the usual charges and commissions.

(b) Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to Owner or Chartered Owner of a Vessel, whether construed to be a private carrier, contract carrier or common carrier, by any statute or rule of law for the time being in force, unless otherwise in this Charter expressly provided.

Sub-Charter or
Assignment

32. Charterer may sublet or assign this Charter to another, but Charterer shall remain responsible for the continued performance hereunder.

W Jason
House

33. In the event of accident, danger, damage or disaster before or after the commencement of any voyage performed hereunder, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequence of which Vessel is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Vessel or its Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.

Liabilities for
Salvage

34. If a salving ship is owned or operated by Owner, salvage shall be paid for as fully as if the salving Vessel belonged to a stranger. Such deposit as Owner or Agents may deem sufficient to cover the estimated contribution of the cargo in General Average, or salvage or special charges solely in respect of the cargo, shall, if required, be made by the shippers, consignees or owners of the cargo to Owner before delivery of the cargo. In lieu of said deposit, Charterer may give Owner a written guarantee to pay any contribution by the cargo, or any salvage or special charges thereon, as may ultimately be required to be paid by the shippers, consignees or owners of the cargo.

0-7

Notices

35. Any notice which Charterer is required to give to Owner hereunder shall be addressed (i) to Owner at its place of business first designated in this Charter, or (ii) to Owner's Agent **Interocean Shipping Company** at **25 Broadway, New York, New York**

Any notice which Owner is required to give to Charterer hereunder shall be addressed (i) to Charterer at its place of business first designated in this Charter or (ii) to Charterer's Agent **National Shipping and Trading Corporation** at **10 Columbus Circle, New York, New York**

Any notice given by letter by either party shall, irrespective of any provision of law otherwise applicable, be deemed to have been given when such notice, addressed to the other party, or to Owner's or Charterer's Agent, at its place of business designated in the Charter, is posted.

Commission

36. Any commission which may be payable as a result of fixing this Charter shall be for the account of Owner.

Arbitration

37. Any dispute arising under this Charter shall be settled by arbitration in New York/London. The party requesting arbitration shall serve upon the other party a written demand for arbitration with the name and address of the arbitrator appointed by it, and such other party shall within twenty (20) days thereafter appoint an arbitrator, and the two arbitrators so named, if they cannot agree, shall appoint a third, and the decision or award of any two shall be final and binding upon the parties. Should the party upon whom the demand for arbitration is served fail or refuse to appoint an arbitrator within twenty (20) days, the single arbitrator shall have the right to decide alone, and his decision or award shall be final and binding upon the parties. The arbitrators shall have the discretion to impose the cost of the arbitration upon the losing party, or divide it between the parties on any terms which may appear just. Any decision or award rendered hereunder may be made and entered as a rule or judgment of any Court, in any country, having jurisdiction.

Clause 38 is part of this Charter Party.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS CHARTER TO BE EXECUTED IN DUPLICATE THE DAY AND YEAR HEREIN FIRST ABOVE WRITTEN.

Witness Signature of J. D. Kerr
at 1000 hours March 25 1971

[Signature]

Witness

INTEROCEAN SHIPPING COMPANY
(OWNER)

By *[Signature]* Vice President

**HELLENIC INTERNATIONAL
SHIPPING S.A.**

(CHARTERER)

By _____

38. It is hereby agreed that the owner will register the vessel with Tanker Owners Voluntary Agreement concerning liability for Oil Pollution (Tovalop) with all costs pertaining to such to be for Owners account.


20-8
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Respondent's Exhibit F
(Poten's Letter of March 25, 1971)

[PHOTOSTAT]

(Opposite) 

POTEN & PARTNERS, INC.

(DELAWARE)

Tanker & Ship Brokers

711 THIRD AVENUE • NEW YORK, N. Y. 10017

TEL. (212) 697-9898

CABLE ADDRESS: "POTENTANK"

ASSOCIATED WITH:
ADDISON OUTWATER ASSOCIATES, INC.

March 25, 1971

National Shipping & Trading Corporation
10 Columbus Circle
New York, New York 10036

Attention: Mr. H. Theodoracopulos

"OSWEGO RELIANCE"
C/P dated March 17, 1971

Dear Mr. Theodoracopulos:

Attached are signed original and duplicate original of subject Charter Party signed by Owners for your signature. In addition we are enclosing copy of letter from Mr. J.D. Kerr, Vice President, which is self-explanatory.

Please advise how we should respond.

Very truly yours,

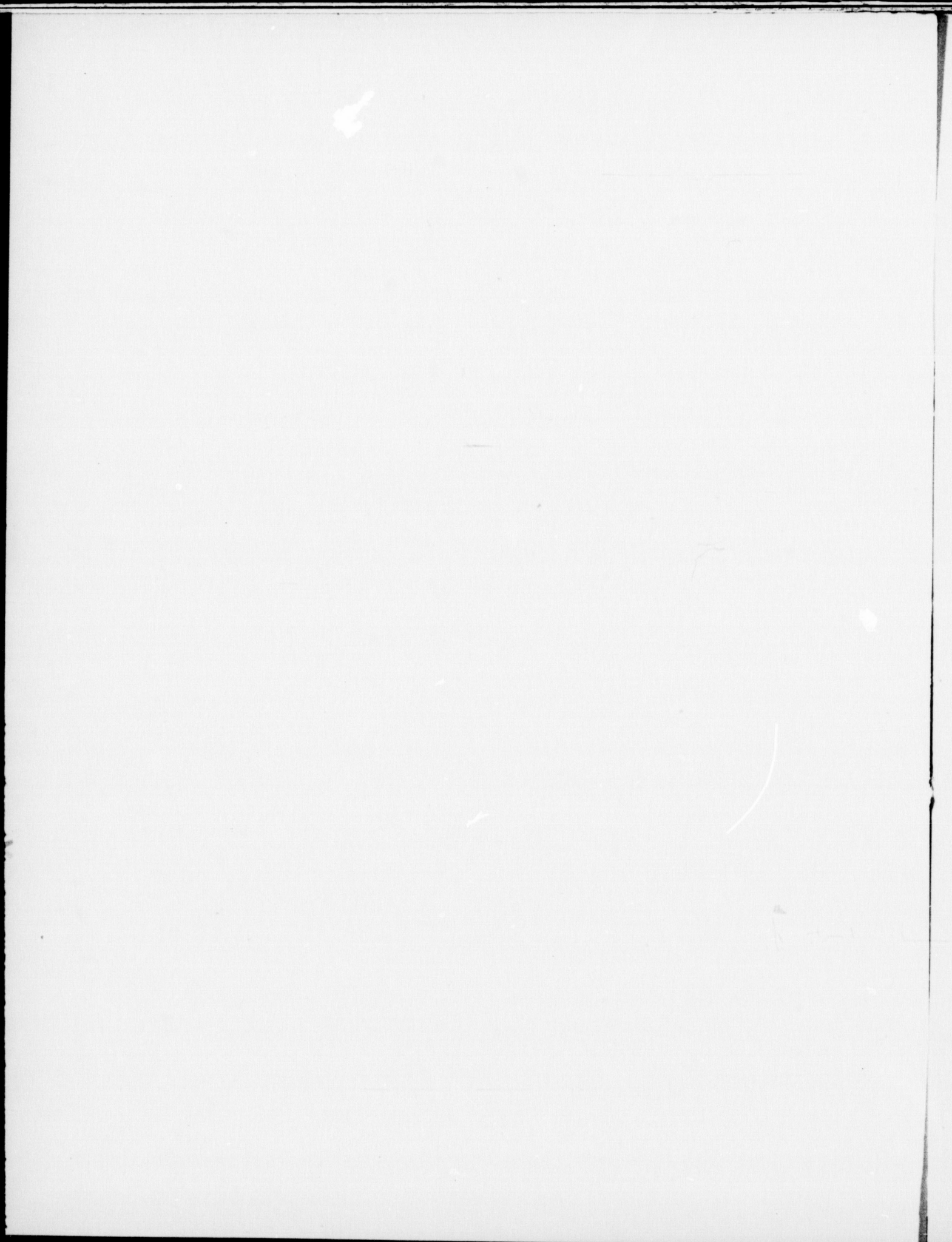
POTEN & PARTNERS, INC.



Frank E. DeSalvo

FED:jr
Encls

F




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Respondent's Exhibit G
(Charter Party for the "Persian Commander")

[PHOTOSTATS]

(Opposite) 

DEFENDANT
EXHIBIT
S. DIST. COURT
S. D. OF N. Y.

CORPORATION
STREET
NEW YORK 10011

Duplicate

SHIP BROKERS
Charter party

DAY OF June, 1970, between Persian Gulf Tanker
d. OF Monrovia, Liberia

(herein called "Owner") and

Hellenic International Shipping S. A. OF Panama City

for the chartering by Owner to Charterer, for a term of Five (5) years, two weeks more or less at Charterer's option, of the Liberian flag motor/steam tanker vessel named

"PERSIAN COMMANDER"

(herein called "Vessel"), built in 1957, at

by Nederlandsche Dok & Schipsb. Mij. of Amsterdam

This Charter shall be subject to the following terms and conditions:

1. (a) Owner represents, undertakes and warrants that on the date of delivery of Vessel, as herein provided for, Vessel will be of abt. 15,000 tons net register, ~~class~~ Highest Bureau Veritas, fitted with engines of ~~13,000~~ 13,000 S.H.P., maximum continuous rating, as certified by Classification Society, and capable of maintaining in a calm sea, a speed of fifteen knots at 98/101 RPM at above stated horsepower when fully loaded to summer freeboard with a fuel consumption of 30 tons (of 2240 lbs.) of bunker "C" fuel oil

per day for main engine and ~~tons for 2400 lbs. of~~ per 24 hours for auxiliaries, (iii) provided with one pumprooms and four cargo pumps capable of discharging in the aggregate a minimum of 5,000 tons (of 2240 lbs.) of water, respectively, of water and stripping pumps capable of discharging in the aggregate a minimum of ~~tons (of 2240 lbs.) of water, respectively.~~ per hour against a back pressure of 100 p.s.i. at Vessel's manifold, (iv) equipped with both wireless telegraph and V.H.F. radio telephone to comply with International Regulations to allow Vessel to communicate with land stations, (v) fitted throughout in all center and wing tanks and bunker compartments with heating coils of sufficient area to heat and maintain cargo temperature to 135° F. in sea water of 40° F. at all times, (vi) fitted with Butterworth or equally efficient tank cleaning equipment, satisfactory to Charterer, (vii) fitted with evaporator(s) capable of producing sufficient fresh water from sea water to meet Vessel's daily requirements, (viii) ~~fitted with~~ sterilized (ix) being so constructed and equipped on delivery under this Charter, in accordance with Regulations now existing, as to enable her to transit the Panama Canal and Suez Canal with Crude Petroleum and/or its products in bulk in accordance with Navigation Regulations.

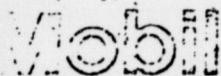
about 42,000

(b) Owner represents, undertakes and warrants that (i) Vessel can carry ~~tons (of 2240 lbs.) total deadweight of cargo,~~ tons (of 2240 lbs.) total deadweight of cargo, bunkers, and stores, on assigned summer mean draft of abt. 38 ft. 2 in. in salt water, corresponding to a load line summer freeboard of abt. 11 ft. 5 in. under present International Load Line Regulations, (ii) that her load line is marked and so placed as to allow her being safely loaded to such draft, and (iii) that Vessel has a total capacity for bulk cargo, after deduction of 2% for expansion, of 1,797,739 cubic feet in center and wing tanks, in addition to permanent bunkers which have a capacity, after deduction of 2% for expansion, of 4043 tons (of 40 cubic feet) fuel oil.

(c) Owner undertakes to maintain Vessel, during the period of service under this Charter, so that all the representations and warranties set forth in paragraphs (a) and (b) of this Article 1 shall at all times be true and accurate. Owner further represents, undertakes and warrants that, on the date of delivery, Vessel will then be ready with holds and cargo tanks clear and clean and in every way fitted for the service and carriage of crude oil and/or dirty petroleum products maximum two (2) grades maximum heat 135 degrees Fahrenheit.

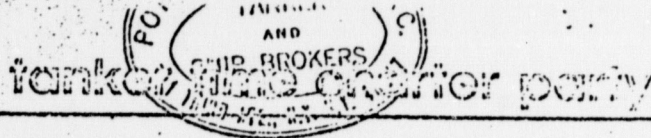
Charterer's option and being on delivery tight, staunch and strong, after having been drydocked and painted at Owner's expense, with pipelines, pumps and heating coils in good working condition, and with a full complement of Master, Officers and Crew for a Vessel of her size and character, and due diligence shall be exercised to so maintain Vessel, in such a state, during the term of this Charter.

(d) Should Vessel, during the term of this Charter, fail to comply with any declaration, undertaking or warranty that Owner has assumed pursuant to the terms and conditions of this Article 1, hire shall be reduced to the extent necessary to fully indemnify Charterer for any such failure, without prejudice or reference to any other claim for failure of guaranteed performance that Charterer may have against Owner under the terms of this Charter.



MOBIL OIL CORPORATION
150 EAST 42ND STREET
NEW YORK, NEW YORK 10017

Duplicate



Bill of

lives
essel and
orm

EXECUTED THIS 5th DAY OF June, 1970, between Persian Gulf Tanker
Company, Ltd. OF Monrovia, Liberia

(herein called "Owner") and

Hellenic International Shipping S. A. OF Panama City

(herein called "Charterer"),
for the chartering by Owner to Charterer, for a term of Five (5) years, two weeks more or
less at Charterer's option, of the Liberian flag motor/steam tanker vessel named

"PERSIAN COMMANDER"

(herein called "Vessel"), built in 1957, at

~~delivery hereunder~~, by Nederlandsche Dok & Schipsb. Mij.
of Amsterdam

This Charterer shall be subject to the following terms and conditions:

scription of
essel and
tonnage

1. (a) Owner represents, undertakes and warrants that on the date of delivery of Vessel, as herein provided for, Vessel will be (i) of
abt. 15,000 tons net register, Highest Bureau Veritas (ii) fitted with engines of 13,000 S.H.P., maximum continuous rating, as certified by Classification Society, and capable of maintaining in a calm sea, a speed of fifteen
knots at 98/101 RPM at above stated horsepower when fully loaded to summer freeboard with a fuel consumption of 30
tons (of 2240 lbs.) of bunker "C" fuel oil

per day for main engine and one pumprooms and four cargo pumps capable of discharging in the aggregate a minimum of 5,000 tons (of 2240 lbs.)
of water and stripping pumps capable of discharging in the aggregate a minimum of 5,000 tons (of 2240 lbs.) of water, respectively,
per hour against a back pressure of 100 p.s.i. at Vessel's manifold, (iv) equipped with both wireless telegraph and V.H.F. radio
telephone to comply with International Regulations to allow Vessel to communicate with land stations, (v) fitted throughout in all center and
wing tanks and bunker compartments with heating coils of sufficient area to heat and maintain cargo temperature to 135° F. in sea water of
40° F. at all times, (vi) fitted with Butterworth or equally efficient tank cleaning equipment, satisfactory to Charterer, (vii) fitted with evapor-
ator(s) capable of producing sufficient fresh water from sea water to meet Vessel's daily requirements, (viii) ~~fitted with~~
~~sterilized discharge~~ and (ix) being so constructed and equipped on delivery under this Charter, in accordance with Regulations now existing, as
to enable her to transit the Panama Canal and Suez Canal with Crude Petroleum and/or its products in bulk in accordance with Navigation
Regulations.

about 42,000

(b) Owner represents, undertakes and warrants that (i) Vessel can carry 2 tons (of 2240 lbs.) total deadweight of cargo,
water, bunkers, and stores, on assigned summer mean draft of abt. 38 ft. 2 in. in salt water, corresponding to a load line
summer freeboard of abt. 11 ft. 5 in. under present International Load Line Regulations, (ii) that her load line is marked
and so placed as to allow her being safely loaded to such draft, and (iii) that Vessel has a total capacity for bulk cargo, after deduction of
2% for expansion, of 1,797,739 cubic feet in center and wing tanks, in addition to permanent bunkers which have a capacity, after
deduction of 2% for expansion, of 4043 tons (of 40 cubic feet) fuel oil.

(c) Owner undertakes to maintain Vessel, during the period of service under this Charter, so that all the representations and warrants
set forth in paragraphs (a) and (b) of this Article 1 shall at all times be true and accurate. Owner further represents, undertakes and
warrants that, on the date of delivery, Vessel will then be ready with holds and cargo tanks clear and clean and in every way fitted for
the service and carriage of crude oil and/or dirty petroleum products maximum two (2) grades
maximum heat 135 degrees Fahrenheit.

Charterer's option and being on delivery tight, staunch and
strong, after having been drydocked and painted at Owner's expense, with pipelines, pumps and heating coils in good working condition,
and with a full complement of Master, Officers and Crew for a Vessel of her size and character, and due diligence shall be exercised to
so maintain Vessel, in such a state, during the term of this Charter.

(d) Should Vessel, during the term of this Charter, fail to comply with any declaration, undertaking or warranty that Owner has as-
sumed pursuant to the terms and conditions of this Article 1, hire shall be reduced to the extent necessary to fully indemnify Charterer for
any such failure, without prejudice or reference to any other claim for failure of guaranteed performance that Charterer may have against
Owner under the terms of this Charter.

6-2

guarantees

defined as
Maximum
Beaufort
Scale 6

(a) In addition to the warranties set forth herein, Owner stipulates, agrees and guarantees that this Charter, maintain in moderate weather, from sea buoy to sea buoy, a guaranteed average speed of no less than 15 knots (which average speed will be determined by taking the total mileage of the actual course which Vessel has travelled divided by the total hours at sea as shown in the log books, excluding stops at sea which are considered as periods of off-hire under the terms of this Charter).

(b) Owner further stipulates, agrees and guarantees that Vessel will, throughout the term of this Charter, maintain the above guaranteed average speed on a fuel consumption of no more than 80 tons (of 2240 lbs.) of bunker "C" fuel oil and ~~tons (of 2240 lbs.) of~~ per day for main engine and auxiliaries, respectively, excluding heating cargo and tank cleaning. Diesel oil may be used in the main engine for the purpose only of maneuvering in close waters or within port limits, or during periods of low visibility when Master deems necessary, for which purpose the consumption of diesel oil shall not exceed ~~tons (of 2240 lbs.) per maneuvering hour. Any excess consumption over~~ tons (of 2240 lbs.) per hour when so maneuvering shall be for Owner's account. For any diesel oil used in main engine other than during maneuvering in close waters, within port limits or when in Master's opinion visibility is low, Owner shall pay Charter the difference in price between diesel oil and fuel oil of seconds viscosity on the quantity of diesel oil so used at current market prices.

(c) Owner further stipulates, agrees and guarantees that the cargo and stripping pumps will, throughout the term of this Charter, discharge Vessel's cargo within a maximum of 24 hours against a back pressure of 100 pounds per square inch at the ship's manifold, and that Vessel is fitted with sufficient block valves for complete segregation to enable simultaneous loading and discharge from a centralized manifold amidships of two (2) grades of cargo.

(d) The speed, fuel consumption and pumping performance which Owner, pursuant to this Article 2, has guaranteed, throughout the term of this Charter, will be reviewed by Charterer 12 calendar months after the date of delivery of Vessel to Charterer, and thereafter at the end of each subsequent period of 12 calendar months; provided, however, that if there should be a period of less than 12 calendar months remaining prior to redelivery, then not later than the commencement of the final month of this Charter. If, in respect of any such period, it is found that Vessel has failed to maintain the speed and/or fuel consumption and/or pumping performance guaranteed pursuant to this Article 2, Charterer shall be compensated in respect of each failing as follows: (i) SPEED - For each knot, or pro rata for each part of a knot, below the guaranteed average speed, a reduction in hire per calendar month of \$0.17 per each DWT of Vessel's capacity reflected in Article 1(b), (ii) FUEL CONSUMPTION - Owner to pay Charterer for each ton (of 2240 lbs.), or pro rata for each part of a ton, consumed in excess of the guaranteed daily consumption for main engines and auxiliaries, at Mobil's average contract price for the particular grade of bunkers at Ras Tanura during the particular period under review, (iii) PUMPING - Vessel to be considered off-hire for each hour, or part of an hour, in excess of the maximum number of hours guaranteed herein for completing pumping of a full cargo against a back pressure of 100 pounds per square inch. Charterer shall determine whether any delay in pumping is the result of unique characteristics of the cargo being pumped or of the receiving terminal, and, if so, shall consider this factor in assessing the pumping performance. In the event that vessel shall, under the terms, conditions and standards of this Article, excel or better the guarantees set forth herein, except for the guarantee pertaining to pumping performance, (i) hire shall be increased by an amount equal to what would have been deducted in the event and to the extent of a failure of guaranteed speed, and (ii) Owner shall recover from Charterer cost of fuel savings should vessel's consumption be below the guaranteed consumption, provided that the guaranteed speed is, at the same time, maintained Singapore immediately upon completion of drydocking and special survey.

Delivery,
Commencement of
Hire and Trade

3. (a) Hire shall commence when written notice from the Master has been given to Charterer or its Agents that Vessel is ready for delivery hereunder and is at Charterer's disposal at ~~in or at such readily accessible dock, wharf or place where she can always safely lie afloat, as Charterer or its Agents may direct.~~ However, hire shall not commence before September 20, 1970 unless with Charterer's consent. Charterer shall have the option to cancel this Charter should Vessel not be ready, in accordance with the provisions hereof, before November 30, 1970. Said option of cancellation shall be declared not later than the day of Vessel's readiness for delivery.

(b) Vessel may be employed in any part of the World, excluding USSR, People's Republic of China, other Communist controlled territories, and Cuba, unless Owner gives written consent, trading between safe ports in such lawful trades as Charterer or its Agents may direct, subject to Institute Warranties and Clauses as may be in effect throughout the period of this Charter; but including ports on the East Coast of Canada, St. Lawrence River, North American Lakes, Greenland and Baltic Sea, upon payment by Charterer of any additional insurance premiums required by Vessel's underwriters for such latter trading. Charter shall be entitled to send Vessel through the Straits of Magellan at any time of the year. (See Rider for Clause 3)

Hire, Adjustments
of Hire and
Redelivery

4. (a) Charterer shall pay for the use and hire of Vessel at the rate of ~~per ton per calendar month on Vessel's deadweight, as set forth in paragraph (b) of Article 1, payment to be made in advance monthly in cash without discount to Marine Midland Grace Trust, New York at 250 Park Avenue Branch, for Persian Gulf Tanker Company Limited account less any disbursements made by Charterer or advancements made by Charterer to the Master or Owner's Agents, or less any compensation due Charterers under paragraphs (d) of Article 1 and 2, and less any allowances due Charterer for off-hire. Hire shall commence from the hour (GMT) and date of delivery of Vessel, as herein provided, and shall continue until the hour (GMT) and date of redelivery to Owner at Two Dollars (U. S.) and Eighty-five cents (\$2.85) for first nine months; Two Dollars (U.S.) and Fifty cents (\$2.50) for next twenty-nine months; Two Dollars (U. S.) (\$2.00) for next twenty-two months.~~

Rider - Clause 3

The Vessel will complete its present charter as a storage vessel off Kharg Island about August 1, 1970 and will then carry one cargo from the Persian Gulf to the Philippines, and then proceed immediately to Singapore for drydocking. The cancelling date will be extended if the Vessel is delayed on its voyage to the Philippines and to Singapore, or during its drydocking and repair, by causes beyond the control of the Owner, not including any action attributable to the negligence of the owner; but in any case, not beyond December 31, 1970.

unless Vessel is lost or off-hire in accordance with the terms of this Charter. Any hire paid in advance and not earned shall be refundable and payable to Charterer by Owner and/or by any party to whom Owner may have assigned the hire; Owner at all times remaining ultimately responsible therefor. Should compliance with future legislation or regulations of classification societies, or other authorities, result in a loss of deadweight, the hire shall be correspondingly decreased to conform to the actual deadweight of Vessel. However, any increase in deadweight resulting from any such future legislation or regulations shall not result in a corresponding increase in hire. Owner and Charterer may agree upon a new rate of hire applicable to such increase in deadweight, and until an addendum to this charter party embodying such agreement is signed on behalf of Owner and Charterer the increase in deadweight shall not be used by Charterer.

(b) In default of payment of hire, as herein specified, Owner shall have the privilege of withdrawing Vessel from the service of Charterer, without prejudice to any claim Owner may otherwise have against Charterer under this Charter.

(c) Should the Vessel be on her final voyage towards the port of redelivery at the time a payment of hire becomes due, said payment shall be made for such length of time as Owner or its Agents and Charterer or its Agents may agree upon as the estimated time necessary to complete the voyage less (i) disbursements arranged by Charterer for Owner's account, (ii) estimated value of fuel in bunkers at the termination of the voyage and (iii) any other sums due Charterer; and when Vessel is redelivered to Owner any difference shall be refunded to or paid by Charterer as the case may be.

5. (a) In the event that a loss of time, in addition to any off-hire allowed pursuant to Article 2, not caused by Charterer's fault, shall (i) continue, due to repairs, breakdown, accident or damage to Vessel, collision, stranding, fire, interference by authorities or any other cause preventing the efficient working of the Vessel, for more than twenty-four (24) consecutive hours, whether at sea or in port, or for an accumulation of more than twenty-four (24) hours during any voyage (a voyage to be considered as a round voyage beginning at the time Vessel tenders for loading at the first port under the voyage in question until such time as it completes the voyage and tenders for loading on the subsequent voyage) or, (ii) continue, for any number of hours (including any part of an hour) due to deficiency of personnel or stores, strike, refusal to sail, breach of orders, or neglect of duty on the part of the Master, officers, or crew, or in order to render salvage services, obtain medical aid or treatment, or for landing any sick or injured person or the body of a deceased person (other than a passenger carried under Article 19 hereof), or due to any other deviation (including the putting back or into any port other than that to which Vessel is bound), then hire shall cease for all time so lost until Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when hire ceased hereunder.

(b) Cost of fuel and water consumed while Vessel is off-hire, pursuant to this Article 5, as well as all port charges, pilotage, towage and other expenses incurred during such period and/or consequent upon putting into any port or place other than to which Vessel is bound, shall be borne by Owner; but should Vessel be delayed or driven into port or to anchorage by stress of weather or on account of accident to, or other consideration for, her cargo, such delay, deviation or loss of time shall be for Charterer's account.

(c) Any delay by ice or time spent in quarantine shall be for Charterer's account, except that delay in quarantine, resulting from the Master, Officers or Crew having communication with the shore at an infected port, where Charterer has given the Master adequate notice of the infection, shall be for Owner's account. Any loss of time through detention by authorities, unless due to Charterer's fault, shall be for Owner's account.

(d) In the event of a breakdown or delay from any cause whatsoever, not otherwise covered by this Article, and Vessel remains on hire, it is mutually understood and agreed that the cost of port charges, tugs, pilots and all other expenses, incurred by reason of such delay, shall be for Owner's account.

6. All or any part of the time Vessel is off-hire during the original term of this Charter, or any extension thereof due to off-hire accumulation, shall be added to the term of the Charter, if Charterer so elects and gives Owner written notice thereof at least three months prior to expiry of the term of this Charter as so extended.

7. Should Vessel be lost or become a constructive total loss, hire shall cease on the day of her loss or constructive total loss, or, if missing, from the date when last heard of, and any hire paid in advance and not earned shall be returned to Charterer. If Vessel is missing or off-hire at the time when hire becomes payable, payment of such hire shall be suspended until Vessel's safety is ascertained or the off-hire period ceases.

8. Owner shall have a lien on all cargoes and sub-freights for all amounts due under this Charter, and Charterer shall have a lien on Vessel for (i) all monies paid in advance and not earned, (ii) the value of fuel in Vessel's bunkers and (iii) all claims for damages arising from any breach by Owner of this Charter.

9. ~~Owner, upon commencement of this Charter, shall establish a revolving fund with Charterer, replenished monthly or as required, in the amount of _____ Such revolving fund shall be used by Charterer to reimburse it or its Agents for any monies advanced to the Master or Owner's Agents or in payment of disbursements made for Owner's account. Upon termination of this Charter, the amount remaining in said fund, after any disbursements by Charterer and advances made by it to Master or Owner's Agents, and deduction of any other sums owing by Owner to Charterer, shall be refunded to Owner.~~

10. In the event of detention of Vessel by any governmental authority, or by any legal action against Vessel or Owner, whereby Vessel is rendered unavailable for Charterer's service for a period of thirty (30) days or more, unless brought about by act or neglect of Charterer, Charterer may, by written notice given before Vessel is free and ready to resume service, elect to terminate this Charter, or to assign

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PO. (SHIP BROKERS) CHARTER PARTY

until the service can again be resumed, without prejudice to any other rights Charterer may have under the Charter or to the extent that Charterer may have for damages. Hire shall cease during the entire time Vessel is out of Charterer's service due to any such detention.

Dry Docking

11. (a) Owner, at its expense, shall drydock, clean and paint Vessel's bottom, and make all overhaul and other necessary repairs, at approximately twelve (12) month intervals, for which purpose Charterer shall allow vessel to proceed to an appropriate port. Owner shall be solely responsible therefor, and also for gasfreering the vessel, upon each such occasion. All towage, pilotage, fuel, water and other expenses incurred while proceeding to and from, and while in, drydock, shall also be for Owner's account.

(b) In case of drydocking pursuant to this Article at a port where Vessel is to load, discharge or bunker, under Charterer's orders hire shall be suspended from the time Vessel receives free pratique on arrival, if in ballast, or upon completion of discharge of cargo, if loaded, until Vessel is again ready for service. In case of drydocking at a port other than where Vessel loads, discharges or bunkers, payment of hire shall cease from the time of deviation until Vessel is again in the same or equivalent position as though no deviation had occurred.

Owner or Charterer To Provide

12. (a) Owner will provide and/or pay for (i) provisions, supplies, deck and engine stores, galley and cabin stores, oil P. & L., Hull and other Insurance on Vessel, wages of Master, officers and crew, consular fees pertaining to the Master, officers and crew, and all fresh water used by Vessel if a motor ship, (ii) galley and crew fuel at the monthly rate payable to Charterer of _____ and (iii) the cost of all fuel oil and/or diesel oil, and also water if a steamer, on board at redelivery, not to exceed 800 tons oil and 300 tons water, respectively (such costs to be determined at the current market prices at the port and date of Vessel's redelivery; or, if not available there, at current market prices at the nearest port where bunkers are available).

(b) Except when the Vessel is off-hire, Charterer will provide and pay for (i) all diesel and fuel oil, and fresh water if a steamer, and all port charges, light dues, docking dues, Panama, Suez and other Canal dues, pilotages, & consular fees (except those pertaining to the Master, officers and crew), tugs necessary to assist Vessel in, about and out of port (but only in the performance of this Charter), Charterer's Agency fees, and expenses of loading and unloading cargoes, (ii) all telephone calls, radio messages and telegrams, and (iii) all overtime of officers and crew worked at Charterer's request, at the monthly rate of _____ and (iv) cost of fuel oil and/or diesel oil, and water if a steamer, on board at delivery, not to exceed 800 tons oil, and 300 tons water, respectively (such costs to be determined at the current market prices at the port and date of Vessel's delivery where hire begins; or, if not available there, at current market prices at the nearest port where bunkers are available).

(c) Notwithstanding the provisions of paragraph (b) (i) of this Article, Owner shall reimburse Charterer for any diesel oil, fuel oil and water expended or consumed in a General Average situation and also during a consequent related drydocking or repair of the Vessel.

Duties of Master

13. (a) Master shall prosecute his voyages with utmost dispatch and render all reasonable assistance with vessel's crew and equipment including hoisting, connecting and disconnecting hoses at ports or sea berths where requested or where such assistance is a normal practice.

(b) Master, although appointed by, and in the employ of Owner, and subject to Owner's direction and control, shall observe the orders of Charterer as regards employment of Vessel, Charterer's Agents or other arrangements required to be made by Charterer hereunder.

(c) If Charterer should be dissatisfied with the conduct of Master or Officers, Owner shall, on receiving particulars of the complaint investigate it and if necessary make a change in the appointments.

(d) Master shall be furnished by Charterer, from time to time, with all requisite instructions and sailing directions, and both he and the Engineers shall keep full and correct logs of the voyages, which shall at all times be available to Charterer and its Agents, and all extracts thereof, or such other forms or reports as Charterer may require, shall be sent to Charterer from each port of call.

Condition of Tanks

14. Charterer will redeliver Vessel to Owner at the expiry of this Charter with tanks in condition suitable for the carriage of the cargo defined in Article 1 (c) of this Charter. If under Article 1 (c) Charterer has the option for clean and/or dirty trading then cargo tanks on delivery may be clean or dirty at Charterer's option. In no event shall Charterer be obligated to redeliver Vessel gasfree.

Previous Cargoes

15. The last two successive cargoes carried, or to be carried, by Vessel immediately preceding her entering upon this Charter consist of or will consist of dirty petroleum products.

Safe Berth

16. Vessel shall be loaded and discharged in or at any port, berth, dock, anchorage, submarine line, or other place (e.g., alongside lighters), as Charterer may direct. Charterer shall exercise due diligence to assure that Vessel is employed only between and at safe ports, berths, docks, anchorages, submarine lines, or other places where she can always lie safely afloat; but Charterer shall not be deemed to warrant the safety of any port, berth, dock, anchorage, submarine line, or other place and shall be under no liability in respect thereof, except for loss or damage caused by its failure to exercise due diligence as aforesaid.

Use of Vessel

17. (a) The whole reach and burden of Vessel (but not more than she can reasonably stow and safely carry) shall be at Charterer's disposal, reserving appropriate space for Vessel's Master, Officers, Crew, tackle, apparel, furniture, fuel, provisions and stores.

(b) Charterer shall have the option of shipping lawful merchandise in cases and/or cans and/or other packages in Vessel's forehold.

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tween decks and/or other suitable space available, subject, however, to Master's approval as to kind and character, amount and stowage. All charges for dunnage, loading, stowing and discharging so incurred shall be paid by Charterer.

18. Owner undertakes that Master will at all times comply with Charterer's requirements, which Charterer will instruct Master, for the avoidance of pollution of the sea by oil and will retain on board all oily residues at all times and be able to pump such residues ashore either separately or commingled with dirty ballast or cargo as Charterer may require.

19. Charterer, at its risk and responsibility, may send passengers and/or super-cargo in available accommodations in Vessel upon any voyage made under this Charter, with Owner to provide provisions and all requisites, except liquors, and Charterer to pay at the rate of \$3.00 (or 21s/6d) per diem for each person during the time of such travel.

20. Bills of Lading shall be signed at any rate of freight Charterer or its Agents may direct, Master attending daily, if required, at the offices of Charterer or its Agents to so sign. Charterer shall indemnify Owner from all consequence or liabilities that may arise from Master, Charterer or its Agents signing Bills of Lading, or other documents, at the request of Charterer or its Agents, or any irregularity in such papers supplied by Charterer or its Agents.

21. (a) No contraband of war shall be shipped, but petroleum and/or its products shall not be deemed contraband of war for the purposes of this Article. Vessel shall not, however, be required, without the consent of Owner, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations or hostilities, whether there be a declaration of war or not, where it might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any other purported governmental organization maintaining naval, military or air forces).

(b) For the purposes of this Article it shall be unreasonable for Owner to withhold consent to any voyage, route, or port of loading, or discharge if insurance against all risks defined in Article 21 (a) is then available commercially or under a Government program in respect of such voyage, route or port of loading or discharge. If such consent is given by Owner, Charterer will pay the provable additional cost of insuring Vessel against all war risks in an amount equal to the value under her ordinary marine policy but not exceeding \$2,300,000. If such insurance is not obtainable commercially or through a Government program, Vessel shall not be required to enter or remain in any such port or zone.

(c) In the event of the existence of the conditions described in Article 21 (a) subsequent to the date of this Charter, or while Vessel is on hire under this Charter, Charterer shall, in respect of voyages to any such port or zone, assume the provable additional cost of wages and insurance properly incurred in connection with Master, officers and crew as a consequence of such war, warlike operations or hostilities.

(d) The provisions of this Article 21 shall apply with the same manner and the same effect to the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

22. Should Vessel be requisitioned for use by any government or governmental authority during the term of this Charter, or any extension thereof, Vessel shall be off-hire hereunder during the period of such requisition, and any hire or other compensation paid in respect of such requisition shall be for Owner's benefit. Charterer may add up to one-half of such requisition period to the term of the Charter, if Charterer so elects in the manner provided in Article 6 hereof.

23. Owner at its expense, throughout the period of this Charter, shall have Vessel fully entered in a Protection and Indemnity Association or Club, in good standing, in both Protection and Indemnity classes.

24. Owner guarantees that Vessel is constructed and equipped to carry, without admixture, at least two (2) qualities or descriptions of oil but, subject to this, neither Owner nor Vessel shall be responsible for any admixture if more than two (2) qualities of oil are shipped, nor for leakage, contamination or deterioration in quality of the cargo, unless the admixture, leakage, contamination or deterioration results from (i) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (ii) error or fault of the servants of Owner in the loading, care or discharge of the cargo.

25. Charterer, subject to Owner's approval, may at its expense and time fit any additional pumps and/or gear for loading or discharging cargo, or equipment of any other nature, which it may require beyond that on board at commencement of Charter, and to make the necessary connections with steam or water pipes, which pumps, gear or equipment shall be Charterer's property, and Charterer may remove same at its expense and time during or at the expiry of this Charter, but leaving Vessel in her original condition except for reasonable wear and tear.

26. Charterer may fly its house flag and paint Vessel's funnel with its own colors or affix thereto Charterer's stack insignia, if desired, at Charterer's expense and time.

27. All salvage monies earned by Vessel shall be divided equally between Owner and Charterer after deducting Master's, officers' and crew's share, legal expenses, hire of Vessel during time lost, value of fuel consumed, repairs of damage, if any, and any other extraordinary loss or expense sustained as a result of the salvage service.

Vessel, her Master and Owner, shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage arising or resulting from: any act, neglect, default or battery of Master, pilots, mariners or other servants of Owner in the navigation or management of Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or inherent vice of the cargo; any act or omission of Charterer or Shipper, Consignee or Owner of the cargo, their Agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of Vessel unless caused by want of due diligence on the part of Owner to make Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of Owner. And neither Vessel, her Master or Owner, nor Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss, damage, delay or failure in performing hereunder arising or resulting from act of God; act of War; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond or other security is promptly furnished to release Vessel or cargo; strike, lockout, stoppage or restraint of labor, picketing, boycotting, or other labor disturbances or interruptions, from whatever cause, either partial or general; or riot or civil commotion. This Article is not to be construed as in any way affecting the provisions for cessation of hire as provided in this Charter.

negligence of
pilots, Etc.

29. (a) Charterer shall not be held responsible for losses sustained by Owner or Vessel through the negligence of pilots, tugboats or stevedores, even though Charterer and/or its Agents engage or furnish such services. Owner hereby authorizes Charterer and its Agents to bind Vessel and its Owner to all the terms and conditions of written or implied contracts or agreements for pilotage, towing or stevedoring in accordance with established local practice in the ports where such services are engaged, and Owner shall indemnify and hold Charterer and its Agents harmless from all damages and expenses that may be sustained or incurred in the event of Charterer and/or its Agents engaging or furnishing such services.

(b) Charterer shall have the option of using its own tugs or pilots, or tugs owned or pilots employed by subsidiary or related companies, in the towing, docking, undocking, piloting or other assistance of Vessel. In this event, the terms and conditions for such services prevailing in the port where such services are rendered, and applied by independent tugboat owners or pilots, shall be applicable, and Charterer, its subsidiaries and their pilots shall be entitled to all the exemptions from and limitations of liability applicable to said independent tugboat owners or pilots and their published terms and conditions. The exemption from and limitation of liability accorded Charterer, its subsidiaries or related companies and their pilots shall also include services rendered by pilots when no tugboats are in attendance of Vessel.

lay-up

See
Clause 41

30. (a) ~~Charterer shall have the option of laying-up Vessel for all or any portion (exceeding 20 days) of the Charter period. In such case hire hereunder shall continue to be paid, but there shall be credited against such hire the whole amount which Owner shall save (or reasonably should save) during such period of lay-up through reduction in expenses, less any extra expenses to which Owner is put as a result of such lay-up.~~

(b) ~~Should Charterer, having exercised said option, desire Vessel again to be put into service, Owner shall, upon receipt of written notice thereof by Charterer, restore Vessel to service as promptly as possible. The option granted to Charterer may be exercised one or more times during the term of this Charter or any extension thereof.~~

AW

31. (a) This Charter and its performance shall be construed, interpreted and governed by the applicable law of the United States of America, except in the case of Average or General Average which shall be settled according to York/Antwerp Rules, 1950 (excluding Rule 22) and, as to matters not therein provided for, according to the usages and customs of the Port of New York/London. If a General Average statement is required, it shall be prepared at New York/London by adjusters appointed by Charterer, subject to approval of Owner, who are to attend to the settlement and collection of the General Average, subject to customary charges. Should Vessel put into a port of distress or be under Average, she shall be consigned to Charterer's Agents, paying them the usual charges and commissions.

(b) Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to Owner or Chartered Owner of a Vessel, whether construed to be a private carrier, contract carrier or common carrier, by any statute or rule of law for the time being in force, unless otherwise in this Charter expressly provided.

Sub-Charter or
Assignment

32. Charterer may sublet or assign this Charter to another, but Charterer shall remain responsible for the continued performance hereunder.

AW Jason
Clause

33. In the event of accident, danger, damage or disaster before or after the commencement of any voyage performed hereunder, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequence of which Vessel is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Vessel or its Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.

Liabilities for
Voyage

34. If a salving ship is owned or operated by Owner, salvage shall be paid for as fully as if the salving Vessel belonged to a stranger. Such deposit as Owner or Agents may deem sufficient to cover the estimated contribution of the cargo in General Average, or salvage or special charges solely in respect of the cargo, shall, if required, be made by the shippers, consignees or owners of the cargo to Owner before delivery of the cargo. In lieu of said deposit, Charterer may give Owner a written guarantee to pay any contribution by the cargo, or any salvage or special charges thereon, as may ultimately be required to be paid by the shippers, consignees or owners of the cargo.

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Any notice which Charterer is required to give to Owner hereunder shall be addressed (i) to Owner at its place of business first designated in this Charter, or ~~(ii) to Owner's Agent~~

Any notice which Owner is required to give to Charterer hereunder shall be addressed (i) to Charterer at its place of business first designated in this Charter or ~~(ii) to Charterer's Agent~~

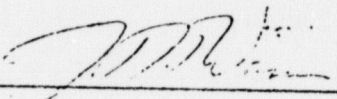
Any notice given by letter by either party shall, irrespective of any provision of law otherwise applicable, be deemed to have been given when such notice, addressed to the other party, or to Owner's or Charterer's Agent, at its place of business designated in the Charter, is posted.

35. Any commission which may be payable as a result of fixing this Charter shall be for the account of Owner.

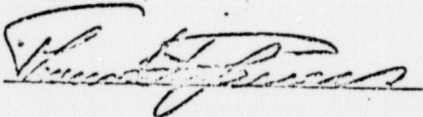
37. Any dispute arising under this Charter shall be settled by arbitration in New York/~~London~~. The party requesting arbitration shall serve upon the other party a written demand for arbitration with the name and address of the arbitrator appointed by it, and such other party shall within twenty (20) days thereafter appoint an arbitrator, and the two arbitrators so named, if they cannot agree, shall appoint a third, and the decision or award of any two shall be final and binding upon the parties. Should the party upon whom the demand for arbitration is served fail or refuse to appoint an arbitrator within twenty (20) days, the single arbitrator shall have the right to decide alone, and his decision or award shall be final and binding upon the parties. The arbitrators shall have the discretion to impose the cost of the arbitration upon the losing party, or divide it between the parties on any terms which may appear just. Any decision or award rendered hereunder may be made and entered as a rule or judgment of any Court, in any country, having jurisdiction.

Clauses 38 thru 43 as attached become part and parcel of this Charter Party.
IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS CHARTER TO BE EXECUTED IN DUPLICATE THE DAY AND YEAR
HEREIN FIRST ABOVE WRITTEN.

Witness

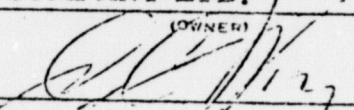


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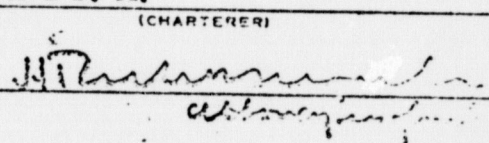
PERSIAN GULF TANKER
COMPANY LTD.

By



HELLENIC INTERNATIONAL
SHIPPING S. A.

By



TC-75

S/T "PERSIAN COMMANDER"
CHARTER PARTY DATED
JUNE 5, 1970

SPECIAL CLAUSES
NOS. 38 through 43

38. Charterer will pay Owner an additional Twenty Thousand Dollars (U. S.) (\$20,000.-) per year for five (5) years at the beginning of each charter year.

39. Charterer will give preference to purchasing bunker from Mobil at competitive prices.

40. Charterer to have the option of utilizing the vessel for the carriage of grain with all expenses of fitting and cleaning for Charterer's account.

41. LAYUP CLAUSE

The Charterer shall have the right to order the layup of the vessel at any time and for any period of time exceeding thirty days at a safe berth and in the event of such layup, the Owner shall promptly take steps to effect all the economies in operating costs including insurance which may be possible and give prompt credit to the Charterer in respect of all such economies at the request of the Charterer at any time the Owner shall furnish an estimate of the economies which would be possible in the event of the laying up of the vessel.

42. STORAGE CLAUSE

The Charterer shall have the right to order the vessel to be used at a safe anchorage for storage at any time and for any period of time exceeding thirty days, and in the event of such storage, the Owner shall promptly take steps to effect all the economies in operating costs including insurance which may be possible and give prompt credit to the Charterer in respect of all such economies at the request of the Charterer at any time the Owner shall furnish an estimate of the economies which would be possible in the event of the utilization of the vessel for storage.

43. The Charterer has assigned to Owner its tanker time charter party dated July 2, 1968, with Pertamina as security for its performance of this charter party. Charterer agrees not to exercise the rights granted it under Clauses 40, 41 and 42 unless it shall have first established to the satisfaction of the Owner that the exercise of such rights will not interfere with the continuing security provided by the charter assignment.

6-10

x x x

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80a

Respondent's Exhibit H
(Form of Guarantee and Letter of Transmittal
from National)

[PHOTOSTATS]


(Opposite) 

EXHIBIT
S. DIST. COURT
S. D. OF N. Y.



CABLE ADDRESS: "THEOIHANS"
TELEGRAM: RCA 224299
ITT 420389
WU 62448

HELLENIC INTERNATIONAL SHIPPING S. A.
INTERNATIONAL SHIPPING & TRADING CORP.

STEAMSHIP AGENTS & CHARTERING BROKERS
10 COLUMBUS CIRCLE
NEW YORK, N. Y. 10019

June 22nd, 1970

Persian Gulf Tanker Company, Ltd.
80 Broad Street
Monrovia, Liberia

Dear Sirs :

We refer to the Tanker Time Charter Party dated June 5th, 1970, between you and the undersigned covering the vessel " PERSIAN COMMANDER ", and our assignment to you dated today of our Tanker Time Charter Party dated July 2nd, 1968, with Pertamina, as supplemented and amended by Addenda No. 1 through 6, thereto (the " Indonesian Charter ") as security for the performance of our obligations under our charter party with you. In consideration of your execution of the charter party between us, we have agreed to furnish you the following :

- 1) Guarantee of John Theodoracopulos, in form annexed hereto.
- 2) A duly executed Addendum No. 7 to the Indonesian Charter which will provide that the rate for the initial nine months of the charter shall be \$ 2.85, the rate for the next twenty nine months will be \$ 2.50, and the rate for the next twenty two months will be \$ 2.00.
- 3) A consent to the assignment of the Indonesian Charter in the form annexed to the Assignment executed today by us, duly executed by Pertamina.
- 4) Evidence of the authority of Harry Theodoracopulos to execute the assignment of the Indonesian Charter as our attorney-in-fact.

We have also executed today a consent to your proposed assignment to Kuwait Foreign Trading, Contracting & Investment Co., S.A.K. (KFTICIC) of the charter between us. You will hold this in escrow pending your closing with KFTICIC on July 8th, and you will notify us when it has become effective.

We agree to furnish you with the documents listed as items 1 to 4 above as promptly as possible and in any event by July 2, so that you will have them in time for your closing. If we do not

NATIONAL SHIPPING & TRADING CORP.

Persian Gulf Tanker Company, Ltd.

June 22nd, 1970

furnish you Addendum No. 7 by July 2, we agree to give you our note on July 2nd, payable on delivery of the " PERSIAN COMMANDER " under our charter with you in the amount of \$ 189,000.00, to be treated as a prepayment of charter hire during the thirtieth to thirty-eighth month inclusive of the charter between us.

If we fail to furnish you the other items listed above in time for your closing, and are unable to satisfy the representatives of KFTCIC (Messrs. Osias Biller and Christy George Peters) that such items will be provided in due course, so as to permit the closing to proceed as schedule, you will have the option, exercisable by notice to us within ten (10) days after July 8th, to cancel the charter between us.

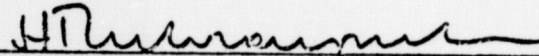
Will you kindly confirm the foregoing by signing and returning the enclosed duplicate of this letter.

Very truly yours,

HELLENIC INTERNATIONAL SHIPPING, S.A.

HT:AM

By



Harry Theodoracopoulos
Attorney In Fact

Confirmed :

PERSIAN GULF TANKER COMPANY LTD.

By _____

Date : _____

H-2

DRAFT

Date _____

GUARANTY OF JOHN THEODORACOPULOS

Reference charter party dated _____ between HELLENIC
INTERNATIONAL SHIPPING, S. A., of Panama, and _____
_____, owners of the S/T PERSIAN COMMANDER,
subject to terms and conditions of above mentioned charter party, I hereby guaranty
the performance of HELLENIC INTERNATIONAL SHIPPING, S. A.

John Theodoracopulos


81a

John & Helen

82a

Respondent's Exhibit K
(Clarkson's Tanker Register (1970), page 12)

[PHOTOSTAT]

(Opposite) 

DEFENDANT *resp.*
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

		3 Deadweight Draught T.P.I. (Summer)	4 Owners Managers	5 Speed Consumption Bunker Capacity	Year Built Builders
		49,399 39-50 150-6	Oswego Ore Carriers Ltd.	16-5 105-7F 3,765	1961 Kawasaki D
		49,311 39-50 150-6	Oswego Ore Carriers Ltd.	16-5 105-7F 3,765	1959 Kawasaki D
OSWEGO GLORY	T.T. Li. ELDA	95,871 43-60	Oswego Marine Corp.	16-6 100-6 7,705	1967 Ishikawajima Ind. K.K.
OSWEGO GUARDIAN	T.T. Li. ELFX	95,603 43-60 234-1	Oswego Navigation Corp.	17 101F 7,600	1968 Ishikawajima Ind. K.K.
OSWEGO PEACE Ex-Charles E. Spahr	T.T. Li. SMGY	49,704 39-35 141-8	Oswego Transportation Corp.	17 95F 7,260	1961 Mitsubishi H Ltd.
OSWEGO RELIANCE	T.T. Li. SMEZ	49,282 39-50 150-6	Oswego Ore Carriers Ltd.	16-5 105-7F 3,765	1960 Kawasaki D
OSWEGO UNITY Ex-Federal Monarch	T.T. Li. 6ZOO	43,933 37-85 134-1	Oswego Unity Corp.	16-5 95F 4,857	1959 Davie Shipb
OTTAWA	T.T. Br. GNDU	93,072 48-21	Trident Tankers Ltd.,	16-25 132-11 6,338	1964 Swan Hunter Richardson
OTTO GROTEVOHL	T.T. Ru.	49,370 38-06	Union of Soviet Socialist Republics,	17	1966 Admiralteisk
OTTO N. MILLER	T.T. Li. SMMQ	53,755 40-32	Chevron Transport Corp.	16 98F 5,571	1963 Odense Staal
OVERSEAS ADVENTURER	M.T. Br. GJMX	19,770 30-76 79-5	London & Overseas Bulk Carriers Ltd.	14-5 30H (1,500) 1,670	1963 Rhein Stahl M G.m.b.H.

6	7	8	9	10	11	
Where Built	L.O.A. L.B.P. Ext. Bldg. Mid Depth	Tanks Centre Wing Capacity '000 cu. ft. '000 bbls. Ballast '000 cu. ft.	G.R.T. N.R.T. Suez Tonnage (Net)	Pump Rooms Pumps Capacity t.w./hr	Engines H.P. at r.p.m. Builders	Remarks
ockyard Co. Ltd. Kobe	744 90 708 70 100 80 50 50	- 24 1,382 246 202	30 486 21,209 25,902	1 3 3,495	2 Steam turbines 20,250S at 109.7 As hull	Ore/oil Carrier, A.B., Bdg.Aft B/CM 313'-16", 14", 8"Am. m.
ockyard Co. Ltd. Kobe	744 90 708 70 100 80 50 54	- 24 1,382 246 202	30,493 21,228 24,678	1 3 3,495	2 Steam turbines 20,250S at 109.7 As hull	Ore/oil Carrier, A.B., L.R.T., Bdg. Aft B/CM 313'-16", 14", 8"Am.
-Harima Heavy Yokohama	899 59 868 02 127 75 62 00	4 8 4,192 747 946	48,316 34,575 ...	1 3 2,800	2 Steam turbines 20,000 at 80 As hull	A.B., B, L.R.T., Str., B/CM 450'-14"Am.
-Harima Heavy Yokohama	899 58 868 02 127 75 62 00	4 8 4,108 732 946	48,320 34,588 ...	1 4 10,000	2 Steam turbines 20,000 at 80 As hull	A.B., B, L.R.T., Bdg.Aft B/CM 444'-12", 10", 8" Am.
heavy Ind. Reorg. Kobe	727 83 688 98 100 07 50 00	11 22 2,160 385 68	28,598 18,164 23,444	2 4 5,000	2 Steam turbines Westinghouse 16,800 at 102 As hull	A.B., B, Str., Bdg.Amids. B/CM 358'-14", 12"Am.
ockyard Co. Ltd. Kobe	744 90 708 70 100 80 50 54	- 24 1,382 246 202	29,358 20,081 25,274	1 3 3,495	2 Steam turbines 20,250S at 109.7 As hull	Ore/oil Carrier, A.B., L.R.T., Bdg. Aft B/CM 313'-16", 14", 8"Am.
uilding Ltd. Levis	710 14 692 58 96 25 48 67	11 22 1,968 350 48	26,489 17,061 ...	2 4 5,200	2 Steam turbines 16,000S at 102 Westinghouse Electric Corp.	A.B., B, L.R.T., Str., Bdg.Amids. B/CM 366'-14", 10"Am.
r & Wigham n Ltd. Wallsend	851 83 815 00 125 00 62 00	7 14 531	51,756 32,805 44,471	1 4 8,000	2 Steam turbines Pametrada 26,500S at 105 Wallsend Slipway & Eng. Co. Ltd.	L.R., Str., Bdg.Aft B/CM 464'-16"Br.
i Shipyard Leningrad	755 58 ... 101 75 ...		32,840 16,390 ...		2 Steam turbines	
skibsværft A/S Lindö	753 00 715 00 103 25 51 50	... 2,203 392 ...	29,859 18,580 25,916	1 4 4,700	2 Steam turbines 17,500 at 102 General Electric Co.	A.B., B, L.R.T., Str.
ordseewerke Emden	559 30 534 80 71 87 39 53	11 22 901 161 33	13,721 7,648 10,538	2 4 2,000	2 S.A. 7-cyl. 8,234B at 117 Masch. Augsburg-Nürnberg A.G.	L.R., V.P., S.D.12", Str., Bdg.Aft B/CM 243'-12"Br.

83a

